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No. 95-1446

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term 1995

THOMAS JOSEPH CURTIS, JR.,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Petition for Writ of Certiorari

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25 pp

QUESTIONS PRESENTED

1. Whether the Fifth Amendment's guarantee of due process is violated when a person is convicted of False Statement On A Loan Application, Title 18, United States Code, Section 1014, and there is no evidence that a false statement was knowingly made with the intent to influence the bank's actions.

TABLE OF CONTENTS

QUESTIONS PRESENTED. i

TABLE OF AUTHORITIES iii

OPINIONS BELOW. 2

JURISDICTION 2

CONSTITUTION AND STATUTORY PROVISIONS INVOLVED. 2

STATEMENT OF THE CASE. 3

A. The Proceedings Below 3

B. The Facts 4

C. The Appeal. 9

REASONS FOR GRANTING THE WRIT. 10

CONCLUSION 19

TABLE OF AUTHORITIES

CASE AUTHORITY

Case	Page
Glasser v. United States, 315 U.S. 60, 62 S.Ct. 457 (1942)	11
Jackson v. United States, 443 U.S. 307, 99 S.Ct. 2781 (1979)	10, 12
United States v. Attick, 649 F.2d 61 (1st Cir.), cert. denied, 454 U.S. 861, 102 S.Ct. 318 (1981)	15
United States v. Baum, 974 F.2d 496 (4th Cir. 1992)	18
United States v. Bell, 535 F.2d 886 (5th Cir. 1976)	16
United States v. Beuttenmuller, 29 F.3d 973 (5th Cir. 1994)	18
United States v. Bonnette, 663 F.2d 495 (4th Cir. 1981)	12
United States v. Brown, 674 F.2d 436 (5th Cir. 1982)	14
United States v. Devoll, 39 F.3d 575 (5th Cir. 1994)	12
United States v. Diogo, 320 F.2d 898 (2d Cir. 1963)	15

United States v. Duncan, 598 F.2d 339
(4th Cir.), cert. denied, 444 U.S. 871,
100 S.Ct. 148 (1979) 16

United States v. Goss, 650 F.2d 1336
(5th Cir. 1981) 18

United States v. Johnson, 585 F.2d 119
(5th Cir. 1978) 13

United States v. Kramer, 500 F.2d 1185
(10th Cir. 1974) 14, 15

United States v. Krown, 675 F.2d 46
(2nd Cir. 1982) 16

United States v. Rapp, 871 F.2d 957
(11th Cir. 1989) 16

United States v. Rothberg, 954 F.2d 217
(4th Cir. 1992) 18

United States v. Shaid, 730 F.2d 225
(5th Cir. 1984) 13

United States v. Whaley, 786 F.2d 1229
(4th Cir. 1986) 12

RULES AND STATUTES

Page

Fed. R. App. P. 4(b) 3

Fed. R. App. P. 34(a) 20

Title 18 U.S.C. 2 4

Title 18 U.S.C. 152 3

Title 18 U.S.C. 1014 . . . . . .3, 10, 12

Title 18 U.S.C. 1344 . . . . . .3, 13

Title 18 U.S.C. 1956(a)(1)(B)(i) 4

Title 18 U.S.C. 3231 3

Title 28 U.S.C. 1291 3

Thomas J. Curtis, Jr., respectfully petitions for a writ of certiorari to review the judgment of the United States Court Of Appeals For The Fourth Circuit in this case.

OPINION BELOW

By its unpublished opinion dated November 14, 1995, the United States Court Of Appeals For The Fourth Circuit affirmed Mr. Curtis' conviction False Statement On A Loan Application. On December 11, 1995, the United States Court Of Appeals For The Fourth Circuit denied Mr. Curtis' Motion For Rehearing With Suggestion For Rehearing En Banc.

JURISDICTION

The jurisdiction of this Court is invoked under 28 United States Code, Section 1254.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment provides in pertinent part:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, ... nor be deprived of life, liberty, or property, without due process of law ...

18 United States Code, Section 1014, provides in pertinent part:

> Whoever knowingly makes a false statement or report, ... for the purpose of influencing in any way the action of ... any institution the accounts of which are insured by the Federal Deposit Insurance Corporation, ... upon any ... loan, ... shall be fined not more than

$1,000,000.00 or imprisoned not more that 30 years, or both.

STATEMENT OF THE CASE

This is an appeal from a conviction by jury of False Statement On A Loan Application in the United States District Court for the Western District of Virginia, final judgment of conviction entered on August 12, 1994, by the Honorable Jackson L. Kiser, Judge of the United States District Court for the Western District of Virginia. The District Court had jurisdiction pursuant to title 18 United States Code, Section 3231. [App. A7] Timely notice of appeal was filed by petitioner Thomas Joseph Curtis on August 11, 1994, and entered on August 12, 1994, pursuant to Rule 4(b) of the Federal Rules of Appellate Procedure. The United States Court Of Appeals For The Fourth Circuit affirmed petitioner's conviction in an unpublished opinion dated November 14, 1995. [App. A1-A5] Petitioner's Motion For Rehearing With A Suggestion Of Rehearing En Banc was denied on December 11, 1995. The United States Court Of Appeals For The Fourth Circuit had jurisdiction pursuant to Title 28 United States Code, Section 1291. [App. A6]

A. The Proceedings Below

On December 9, 1994, a 21-count Superseding Indictment was returned against appellant in the United States District Court For The Western District of Virginia, At Roanoke, and transferred to the Charlottesville Division. [App. A13-A33] The indictment originally alleged the following: two counts of Bank Fraud, Title 18, United States Code, Section 1344, one count, Count Number 2, of False Statement On A Loan Application, Title 18, United States Code, Section 1014, twelve counts of Bankruptcy Fraud, Title 18, United States Code, Section 152, and six counts of Money

Laundering, Title 18, United States Code, Section 1956 (a)(1)(B)(i) and 2. [App. A13-A33]

On April 11, 1994, a hearing was held on appellant's Motion To Dismiss Counts 4-21 and the Court granted the motion as to counts 6-20 and dismissed them. Trial then began before a jury on the remaining counts.

On April 15, 1994, at the conclusion of the government's case-in-chief, and again on April 19, 1994, at the closing of all evidence, the Court denied appellant's Motions for Judgment of Acquittal. [App. A75-A85]

On April 22, 1994, the jury convicted appellant on one count, Count Number 2, of False Statement On A Loan Application, and acquitted him on all other counts except one, to which they could not reach a decision. The government moved for a mistrial on the one count to which the jury could not reach a decision and later, on August 3, 1994, the government moved to dismiss that one count and such motion was granted by the Court. Appellant was sentenced on July 29, 1994, to 72 hours confinement and 5 years supervised release. Appellant's timely Notice Of Appeal was received by the United States Clerk on August 8, 1994, filed on August 11, 1994, and entered on August 12, 1994.

B. The Facts

B. J. Walter, called by the government, testified that he had represented a bank in Texas in a 3.8 million-dollar law suit against appellant in 1987. [App. A34] He testified that the lawsuit was settled in January of 1987 with appellant agreeing to either pay the bank $500,000 in three payments, or accept a two million-dollar judgment in favor of the bank. That appellant did not make the initial payment of $300,000 due on May 20, 1987, and a judgment was entered on May 21, 1987. [App. A36] Mr. Walter testified that appellant did not have a judgment against him on this matter at any time in 1986 and

therefore had no reason to include on a loan application or financial statement this two million-dollar judgment. [App. A41-A43]

Mr. Walter further testified that appellant's March 31, 1987, financial statement did list a $500,000 contingent liability for civil disputes but did not list the 3.8 million-dollar lawsuit, which, in his opinion, was a contingent liability. [App. A39-A40]

Mr. Walter testified that the first notice to appellant of the judgment was dated November 24, 1987, and he did not know when it was recorded, possibly as late as 1988. [App. A44]

The government offered into evidence a Settlement Agreement [App. A86-A95] and Agreed Judgment [App. A94-A95], both signed by appellant on January 21, 1987. These two instruments clearly reflect that appellant had agreed to settle the lawsuit in Texas with Interfirst Bank Southwest, for $500,000 with payments to begin on May 20th, 1987, but, the agreement called for a two million-dollar judgment if appellant were not able to make the payments. Appellant did not make the payments as agreed and judgment was taken May 21st, 1987. [App. A96-A99]

Timothy Riggle, called by the government, testified that he had been in the employ of appellant and while an employee he applied for and received a $112,000 loan from Guaranty Savings and Loan to build a house on State Route 648 in Charlottesville, Virginia. [App. A45-A46]

Susan Clayton Gallion, called by the government, testified that she was the Loan Closing Manager and Servicing Supervisor at Guaranty Savings and Loan. [App. A47-A48]

Ms. Gallion testified that in July of 1987 appellant called and said that Mr. Riggle was no longer in his employ and he wanted to bring Mr. Riggle's loan current, which was in default, and convert it to permanent financing. [App. A48] She further testified that on July 28th, 1987, appellant paid all past due interest. [App. A49-A50]

Ms. Gallion further testified that she reviewed appellant's loan application and on that loan application appellant indicated that he had no outstanding judgments against him. Further, in response to the question, are you a party to any lawsuits, appellant answered, "general business lawsuits, if any," and referenced his financial statement, dated March 31, 1987. [App. A118] This financial statement included a $500,000 contingent liability for any unresolved civil lawsuits. [App. A122-A128] Ms. Gallion testified further, that they, Guaranty Savings and Loan, were put on notice of lawsuits. [App. A51]

Ms. Gallion testified that the loan never closed because appellant did not come up with the closing funds. [App. A52] Guaranty proceeded to foreclosure and the property was sold on the courthouse steps on February 28th, 1988 [App. A49] for the amount of $114,222.85. [App. A55] She further testified that even though the property sold for more than the face value of the loan there was a deficiency of $7,700 due to past interest and attorney fees that was paid by appellant. [App. A54]

Ms. Gallion's testimony concluded with the following exchange:

> Q. Had the loan closed, was Mr. Curtis going to get any money?
>
> A. No. sir.
>
> Q. If you-all would have funded the loan and Mr. Curtis would have been -- obtained control of ownership of that property, and if he would have sold it in the future, no matter what he would have sold it for, you would have obtained your first lien position and gotten your $112,000 back; correct?
>
> A. That is correct.

Q. Okay. Am I fair in saying that on this entire transaction every dime that was paid, either for the loan fees or interest or whatever; any money that was paid you, it was paid by Mr. Curtis?

A. That is correct.

Q. Now, the -- you never made him the loan. In fact, the house went into foreclosure, was sold, the bank got their money back minus -- the bank got their money back including whatever back interest, or attorney fees, or expenses you had correct?

A. That is correct.

Q. Okay. Let me ask you a question. Does it appear to you that Mr. Curtis was trying to cheat the bank out of any money in these transactions?

A. No, it does not. [App. A56-A57]

Steven Stacy, called by the government, testified that he was the vice president in charge of mortgage lending at Guaranty Savings and Loan.

Mr. Stacy testified that he had done credit checks on appellant and knew of several outstanding judgments and other financial problems, "slow pays and no pays". [App. A60] But he did not know about a 2 million-dollar judgment against appellant. [App. A59]

Mr. Stacy further testified that Guaranty Savings and Loan was very heavily involved with appellant's finances and very interested in keeping up with what was going on with appellant. [App. A61]

On cross examination he was shown a February 27, 1986, newspaper article from The Daily Progress, the largest newspaper in Charlottesville, which also contained appellant's picture, and which Mr. Stacy admits would have caught his

attention. The newspaper article was read to the jury and clearly stated that appellant was being sued in Texas for approximately 4 million-dollars but appellant believed he would win the lawsuit. [App. A61-A62, A131-A138]

At the conclusion of Mr. Stacy's testimony he was asked the following questions and gave the following answers:

Q. Tell the ladies and gentlemen how Mr. Curtis could have cheated the bank out of any money in this transaction.

A. I don't think the bank felt that we could have last (lost) any money on this transaction because we always --

Q. But you're not confined by what the bank felt. You've got hindsight as (that's) 20-20. You can look back on the plot or anything you want to. Tell them how Mr. Curtis could have cheated the bank out of any money in this transaction.

A. I don't believe he could have.

Q. I want to know how he could have cheated the bank out of any money. He's not on trial for the Keswick venture. He's not on trial for that. He's only on trial for trying to cheat the bank out of, out of $112,000; okay? So tell us how he could have cheated the bank out of $112,000.

A. I don't think he could have. [App. A66-A67]

M. Clifton McClure, an attorney called by the government, testified that he received the (undated) [App. A116-A120] loan application and No Substantial Change In Financial Condition form, dated 12/7/87, from appellant on

December 4th, 1987. [App. A67-A69, A121] Four days later he sent them to the bank. [App. A68]

He further testified that the bank was anxious to close the loan because it was delinquent and the bank examiners were putting a lot of pressure on them to do something about it. [App. A60-A70]

Mr. McClure knew that appellant had a lawsuit pending in Texas. [App. A71] But, he did not find out about the judgment until some time in 1988, when he was doing some title search, and he believes he told appellant about it. [App. A71-A72]

Mr. McClure further testified that the judgment could not have affected the bank's lien, as it was prepared. If the loan had closed, the land trust had prepared a deed to Tom and Paulette Curtis as tenants by entirety, and with tenants by the entirety the property is not subject to the debts of one party. [App. A71-72]

Mr. McClure further testified that appellant's financial statement was "unaudited," which means that a certified public accountant has not audited the figures that are on the statement. [App. A72]

S. A. Carl Bond, called by the government, testified that he works for the State Police of Virginia and was assigned the investigation of this case. He further testified that he first heard of appellant in July of 1989. [App. A73]

Officer Bond testified that he found, in appellant's files, a letter dated July 15th, 1987, that indicated that a judgment had been taken against appellant, on July 14th, 1987, for $30,000 and that this judgment seemed inconsequential due to the judgment of Interfirst Bank Southwest, (which was the two million-dollar judgment). [App. A74, A129]

C. The Appeal

On appeal to the United States District Court Of Appeals For The Fourth Circuit, Mr. Curtis argued that the

evidence was not sufficient to convict him of knowingly making a false statement on a loan application for the purpose of influencing the bank's actions. The United States Court Of Appeals For The Fourth Circuit rejected this argument holding that Mr. Curtis knowingly made a material false statement on his loan application and that the false statement had the capacity to influence the bank's lending decision.

REASONS FOR GRANTING THE WRIT

The Fourth Circuit decision presents an issue worthy of this Court's review: (1) whether the Fifth Amendment's guarantee of due process is violated when a person is convicted of False Statement On A Loan Application, Title 18 United States Code, Section 1014, and there is no evidence that a false statement was knowingly made with the intent to influence the bank's actions. In addressing this issue, the United States Court Of Appeals For The Fourth Circuit has decided important questions of federal law in a way that conflicts with relevant decisions of this Court, as well as other United States Courts Of Appeals.

I. THE FIFTH AMENDMENT'S GUARANTEE OF DUE PROCESS IS VIOLATED WHEN A PERSON IS CONVICTED OF FALSE STATEMENT ON A LOAN APPLICATION, TITLE 18 UNITED STATES CODE, SECTION 1014, AND THERE IS NO EVIDENCE THAT A FALSE STATEMENT WAS KNOWINGLY MADE WITH THE INTENT TO INFLUENCE THE BANK'S ACTIONS.

In Jackson v. Virginia, 443 U.S. 306 (1979), this Court stated:

> "[A]n essential of the due process guaranteed by the Fourteenth Amendment [is] that no

> person shall be made to suffer the onus of a criminal conviction except upon sufficient proof - defined as evidence necessary to convince a trier of fact beyond a reasonable doubt of the existence of every element of the offense. [This] doctrine requires more than simply a trial ritual. A doctrine establishing so fundamental a substantive constitutional standard must also require that the fact-finder will rationally apply that standard to the facts in evidence. A 'reasonable doubt,' at a minimum, is one based upon 'reason.' Yet a properly instructed jury may occasionally convict even when it can be said that no rational trier of fact could find guilt beyond a reasonable doubt, and the same may be said of a trial judge setting as a jury ... [S]uch an occurrence has traditionally been deemed to require reversal of the conviction."

Jackson, 443 U.S. at 316-17. The burden of proving guilt beyond a reasonable doubt establishes a fundamental and substantive constitutional standard. The jury in the instant case failed to apply rationally the reasonable doubt standard to the facts in evidence. Because the evidence did not establish beyond a reasonable doubt that Mr. Curtis knowingly made a false statement to the bank with the intent to influence the bank's actions, his conviction violated the due process guaranteed by the Fifth Amendment and must therefore be reversed.

The standard of review in cases challenging sufficiency of the evidence is evidence viewed in the light most favorable to the government. Glasser v. United States, 315 U.S. 60, 80, 62 S.Ct. 457, 469 (1942). The reviewing appellate court is to resolve all inferences and credibility

determinations in favor of the jury's verdict. Jackson v. Virginia, 443 U.S. 307, 319, 99 S.Ct. 2781, 2789 (1979).

However, in the instant case no other inference can be drawn from this evidence other than appellant's innocence.

There are four essential elements to prove beyond a reasonable doubt in a section 1014 case: (1) false statement to federally insured institution; (2) for the purpose of influencing the institution's action; (3) statement was false as to a material fact; and (4) false statement was made knowingly. United States v. Whaley, 786 F.2d 1229 (4th Cir. 1986); and United States v. Bonnette, 663 F.2d 495 (4th Cir. 1981).

In the instant case there is no issue as to element number (1), appellant concedes that the institution was federally insured. However, appellant contends that the evidence is insufficient to prove the other elements.

A clear understanding of the scope and purpose of Title 18, United States Code, Section 1014 is necessary.

Appellant cites the recent Fifth Circuit case of United States v. Devoll, 39 F.3d 575 (5th Cir. 1994). In Devoll, the government argued that section 1014 did not require proof that a false statement was for the purpose of influencing a financial institution in connection with its lending activities. After reviewing the legislative history and application of section 1014, the Court held,

> "With this background we are not persuaded that the statute imposes liability whenever a defendant's false statement was intended to interfere with any activity of a financial institution; such a broad interpretation of section 1014 presumably would encompass fraud or false representations having nothing to do with financial transactions ..."

Here, as is demonstrated by the record, appellant was merely attempting to take the institution out of a bad loan,

either by taking over the loan himself or by allowing the institution to foreclose on the property and then paying off any deficit. Appellant did not care if the institution approved his loan or not, nor was he seeking to profit from the situation. No other inference can be drawn from the facts.

In carefully examining the evidence, appellant argues that it is only his intent, and not that of the bank officers, that is in issue here. United States v. Johnson, 585 F.2d 119 (5th Cir. 1978); and United States v. Shaid, 730 F.2d 225 (5th Cir. 1984). The only possible conclusion as to appellant's intent to be drawn from this evidence must be that appellant obviously had no intent to cheat the institution. In fact, appellant was acquitted by the jury of Count 1, the allegation of bank fraud, Title 18, United States Code, Section 1344, which count required a finding of intent to defraud and was based on exactly these same facts.

The facts established that appellant was being sued in Texas by a bank for 4 million-dollars. That appellant entered into a settlement of that suit, on January 21, 1987, where he was to pay the bank $500,000 according to a certain payout schedule. When he did not make the payments, judgment was rendered against him on May 21, 1987, as agreed in the Settlement Agreement. [App. A86-A90]

The facts do not establish exactly when, or by whom, appellant actually became aware that the judgment in Texas had been taken against him. Appellant provided the institution with at least two financial statements, one dated March 31, 1986 [App. A100-A107] and one dated March 31, 1987. [App. A122-A128] In each of the financial statements appellant references the institution to a $500,000 contingent liability for possible civil suits.

Appellant applied for this loan and at some time filled out a loan application, although the loan application is undated. [App. A120] However, both Ms. Gallion, the loan closing manager, and Mr. Stacy the vice president for mortgage lending, admit they were put on notice of lawsuits

and Mr. Stacy clearly admits to knowledge of judgments, and the loan application itself refers to general business law suits. [App. A118]

Additionally, the entire story of appellant's four million-dollar lawsuit in Texas with Interfirst Bank Southwest was in the Charlottesville newspaper and Mr. Stacy admits that due to the institution being so involved financially with appellant something like this newspaper story would have certainly caught his attention. [App. A61, A131-138]

According to Mr. McClure, the institution was anxious to close the loan and allowed appellant to simply attach a No Substantial Changes statement to his financial statement and did not require a new financial statement. [App. A69-A71, A121]

These facts are not dissimilar to the facts of United States v. Brown, 674 F.2d 436 (5th Cir. 1982), where that defendant submitted a financial statement that misrepresented his financial situation in two significant respects, but the financial statement had been made three months prior to his loan request. In Brown, the Court held,

> "It would be with great misgivings that we would advance onto the slippery slope presented by countenancing a criminal conviction based on bygone misrepresentations made on another occasion and reposing in a customer's file. Especially is this so when all questions of the backing of the law's sanction for the loans of February 7, and March 2, 1977, could have been foreclosed by simple demands by the bank officer for current information."

These facts are also similar to the facts in United States v. Kramer, 500 F.2d 1185 (10th Cir. 1974), where a clearly false financial statement was presented to a bank along with a loan request, but where that customer had previously

submitted four other financial statements and the bank clearly did not consider the financial statement in question. In Kramer, the Court held, "Finally, sufficient evidence does not exist by which a jury could find that the financial statement was submitted to the bank for the purpose of influencing approval of the loan. A financial statement was not necessary, as a current one already was on file with the bank".

At the heart of the government's case is their contention that appellant's No Substantial Changes statement is a false statement, made with the intention that the institution be influenced by it. To this appellant argues that the statement is the literal truth and appellant can not be convicted of making a false statement if it is literally true. United States v. Diogo, 320 F.2d 898 (2d Cir. 1963); United States v. Attick, 649 F.2d 61 (1st Cir.), cert. denied, 454 U.S. 861, 102 S.Ct. 318 (1981).

The undisputed facts are that in January appellant had settled his four million-dollar lawsuit with Interfirst Bank in Texas for $500,000. [App. A86-A90] Appellant's financial statement of March 31, 1987 clearly reflected a $500,000 contingent liability for civil disputes. [App. A122-A128]

Even though appellant was unable to begin making payments in May, as was called for in the settlement agreement, [App. A88] no other conclusion could be reached except that appellant believed he could settle the judgement at any time with the payment of the $500,000 reflected on his March 31, 1987 financial statement. The literal truth was that there actually were no substantial changes.

This No Substantial Changes statement is not a banking form. It is not a legal form. It was not prepared by an accountant or by a lawyer. It was simply a statement made by appellant that, in his opinion, there had been no substantial changes.

When appellant provided the institution with the No Substantial Changes statement, he did so knowing that under no circumstance could his personal financial situation effect

the institution's exposure on the loan in question. Mr. McClure clearly testified that the two million-dollar judgment could not have affected the institution's lien in any way. [App. A72]

The government must prove that appellant willfully and knowingly made a false statement with intent to influence the institution in granting him a loan. United States v. Rapp, 871 F.2d 957 (11th Cir. 1989). Here, all the evidence shows is that appellant made a hurried and perfunctory statement that there had been no substantial changes since the preparation of his March 31, 1987 financial statement, some six months before. The institution could have required completely new financial statements, the institution knew of judgments, the institution knew of law suits, but they chose to push forward because they were in a hurry. They were in such a hurry that they abandoned appellant's loan request and foreclosed on the property.

The mere fact that the loan application or financial statement was submitted to the institution and may have been incomplete or inaccurate is not sufficient, appellant must have had the intent to influence the institution in making the loan. United States v. Krown, 675 F.2d 46 (2nd Cir. 1982).

On the issue of intent, evidence of repayment of the loan is relevant. United States v. Bell, 535 F.2d 886 (5th Cir. 1976). Restitution is also a relevant consideration on the issue of intent. United States v. Duncan, 598 F.2d 839 (4th Cir.), cert. denied, 444 U.S. 871, 100 S.Ct. 148 (1979).

This loan was in default, it was not a loan to appellant. Appellant had absolutely no responsibility or liability with respect to this loan. Appellant brought the loan current by paying the past due interest and attempted to take over the loan. The government may argue he did so with intent to derive a profit from a possible later sale, however there is no evidence to support this argument.

From the evidence however, no other conclusion can be reached except that appellant was merely attempting to help the institution. There can be no other explanation for

appellant's generous and gratuitous payment of the institution's deficiency once the property was sold through foreclosure on the courthouse steps. It can not be argued that appellant paid the $7,700 deficiency for any other purpose than to help the bank and perhaps his ex-employee.

It can not be argued that he did it to avoid prosecution. Mr. Bond testified that he was the officer in charge of investigating appellant and that he never even heard of appellant until 1989. [App. A73] Appellant paid the $7,700 in 1988.

Both Ms. Gallion and Mr. Stacy admit that appellant could not have cheated the institution out of anything in this matter. Ms. Gallion concluded her testimony with the following:

> Q. Okay. Let me ask you a question. Does it appear to you that Mr. Curtis (appellant) was trying to cheat the bank out of any money in these transactions?
>
> A. No, it does not. [App. A56-A57]

Mr. Stacy's cross examination ending with the following:

> Q. Okay. I understand that's a statement, but it's not an answer to my question. I want to know how he could have cheated the bank out of any money. He's not on trial for the Keswick venture. He's not on trial for that. He's only on trial for trying to cheat the bank out of, out of $112,000; okay? So tell us how he could have cheated the bank out of $112,000.
>
> A. I don't think he could have. [App. A66-A67]

The mens rea in a section 1014 case is not complete by a showing that a statement was merely untrue or inaccurate. The statement must be made with knowledge of its falsity and with intent to influence. The good faith defenses set out in bank fraud cases such as United States v. Goss, 650 F.2d 1336, (5th Cir. 1981), apply to section 1014 cases also, as good faith would eliminate any fraud or willfulness and would be an absolute defense.

In recent Fourth Circuit cases on sentencing, United States v. Baum, 974 F.2d 496 (4th Cir. 1992); and United States v. Rothberg, 954 F.2d 217 (4th Cir. 1992); this Court has consistently referred to the alleged conduct as "fraudulent conduct."

There is no evidence of fraud here, no evidence of willfulness, and no evidence of appellant's intent that the institution rely on false statements.

In the recent Fifth Circuit case of United States v. Beuttenmuller, 29 F.3d 973 (5th Cir. 1994), the facts are different but the application is very similar.

> "Throughout this case the government has, rather vehemently, argued that this complex real estate transaction was fraught with illegal conduct... The only thing these parties had no right to do was violate any statute, regulation, or law in the process. The government has failed to prove beyond a reasonable doubt, however, that these parties violated any statute, regulation, or law."

This was essentially a perfectly harmless transaction where appellant tried to take over a loan that was in default as a favor to a financial institution and an ex-employee, but he was unable to do so. The property was sold on the courthouse steps for $114,000, an amount greater than the face value of the loan, which was $112,000, but the institution had $7,700 in

out-of-pocket expenses associated with closing costs, attorney fees, and additional back interest. Even though he had no duty or responsibility to do so, appellant paid the deficit, so that the financial institution would have no loss on the transaction.

The government has taken this transaction, which had been completed and forgotten for years, with no loss to the financial institution, and literally created this section 1014 case.

Sufficient evidence does not exist by which a reasonable jury could find beyond a reasonable doubt that appellant knowingly and willfully made a false statement to a financial institution with intent that the financial institution be influenced by it in any way.

CONCLUSION

The petition for a writ of certiorari should be granted.

THOMAS J. CURTIS, JR.
APPELLANT

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EDITOR'S NOTE

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UNITED STATES OF AMERICA,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Petitioner's Appendix

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143 pp

TABLE OF CONTENTS
APPENDIX TO PETITION

Appendix Page

Opinion,
United States Court of Appeals
For The Fourth Circuit,
entered A1

Order,
United States Court of Appeals
For The Fourth Circuit,
Denying Pettion for Rehearning and
Suggestion for Rehearing In Banc A6

Judgement in a Criminal Case of
The Honorable Jackson L. Kiser, Chief Judge,
entered August 11, 1994 ..... A7

Superseding Indictment
entered July 23, 1993 ..... A13

Excerpts of the Transcript of Testimony before
The Honorable Jackson L. Kiser, Chief Judge,
beginning on April 11, 1994 ..... A34

Testimony of B. J. Walter A34

Testimony of Timothy Riggle A45

Testimony of Susan Gallion A47

Testimony of Stephen Stacy A58

Testimony of M. Clifton McClure A67

Excerpts of the Transcript of Testimony before
The Honorable Jackson L. Kiser, Chief Judge,
(continued)

Testimony of S. A. Carl Bond A73

Motions for Judgement of Acquittal A74

GOVERNMENT EXHIBITS:

1B: Settlement Agreement,
filed April 11, 1994 . . . . . A86

Attached Exhibit:

Agreed Final Judgement
undated A94

1C: Agreed Final Judgement
dated May 7, 1987 . . . . . A96

2: Tom J. and/or Paulette Curtis'
Financial Statement
dated March 31, 1986 . . . . . A100

42: Letter from Christi Johnson,
Guaranty Savings & Loan, to
Timothy D. Riggle
dated June 5, 1987 . . . . . A108

GOVERNMENT EXHIBITS: (continued)

42. (continued)

Letter from Christi Johnson of
Guaranty Savings & Loan to
M. E. Gibson, Jr., Esquire
dated July 7, 1987 . . . . . A109

Handwritten Client/Realtor
Contract Comments
dated July 7,
10 and 20, 1987 111

Letter from M. Clifton McClure, Esquire,
McClure, Callaghan, Carter,
Atkins & Barnes, to Steve Stacy,
Guaranty Savings & Loan Association,
dated July 28, 1987 . . . . . A112

Loan Payment Receipt and
Check No. 37751 Payable to
Guaranty Savings & Loan Association
dated July 28, 1987 . . . . . A113

44: Letter from
M. Clifton McClure, Esquire,
McClure, Callaghan, Carter,
Atkins & Barnes, to Susan C. Gallion,
Guaranty Savings & Loan Association,
dated December 8, 1987 . . . . A115

GOVERNMENT EXHIBITS: (continued)

45: Residential Loan Application
undated A117

46: Statement of Financial Condition,
dated December 12, 1987 . . . A121

Attachment:

Financial Statements of
Tom J. and/or Paulette Curtis
dated March 31, 1987 A122

65: Letter from
Paxton Lowery, Esquire,
Patterson, Boyd, Lowery & Aderholt, P.C.,
to Tom J. Curtis
dated July 15, 1987 . . . . . A129

DEFENDANT'S EXHIBITS:

3: Article from
The Daily Progress titled "Fighter
Keswick Developer Usually Wins"
dated February 27, 1986 . . . . A131

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA
Plaintiff - Appellee,

v.

THOMAS J. CURTIS, JR.
Defendant - Appellant.

No. 94-5603

Appeal from the United States District Court
for the Western District of Virginia, at Charlottesville
Jackson L. Kiser, Chief District Judge
(CR-93-120-C)

Submitted: October 24, 1995

Decided: November 14, 1995

Entered: November 14, 1995

Before HALL and MICHAEL, Circuit Judges,
and PHILLIPS, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

COUNSEL

R. P. Cornelius, ADAMO & CORNELIUS, Houston, Texas,
for Appeliant, Robert P. Crouch, Jr., United States Attorney,
Jennie L. M. Waering, Thomas L. Eckert, Assistant United

States Attorneys, Thomas E. Booth, UNITED STATES DEPARTMENT OF JUSTICE, Washington, D. C., for Appellee.

Unpublished opinions are not binding precedent in this circuit. See I.O.P. 36.5 and 36.6.

OPINION

PER CURIAM:

Appellant appeals from his conviction for making a false statement on a loan application to a federally insured financial institution in violation of 18 U.S.C.A. § 1014 (West Supp. 1995). On appeal, Appellant claims that the trial court erred in denying his motion for a judgment of acquittal challenging the sufficiency of the evidence. In reviewing the sufficiency of the evidence, this court considers the evidence in the light most favorable to the government and determines whether any rational trier of fact could have found that the elements of the offense were proven beyond a reasonable doubt. *Glasser v. United States*, 315 U.S. 60, 80 (1942); *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). We find that the evidence supports Appellant's conviction.

I.

Appellant settled a lawsuit in January 1987 filed against him in Texas by InterFirst Bank Southwest (InterFirst), formerly First State Bank of Bellaire. He agreed to pay InterFirst $500,000 in three installments. He further agreed that if he failed to make timely payments to InterFirst in accordance with the terms of the agreement, InterFirst

would be entitled to an immediate $2,000,000 judgment against him. Appellant did not make the first payment as required by the agreement with InterFirst. Therefore, in May 1987 InterFirst obtained a $2,000,000 judgment against Appellant in a Texas court.

Appellant subsequently applied for a loan from Guaranty Savings and Loan (Guaranty), a federally insured bank in Virginia, in December 1987. Appellant submitted to the bank a signed loan application, a financial statement dated March 1987, and a cover letter.

The loan application included the question, "Are there any outstanding judgments against you?" Appellant answered, "No." Furthermore, Appellant's financial statement did not list the $2,000,000 judgment against him. In the liability section of the March 1987 financial statement, Appellant listed $500,000 as a contingent liability. He stated that the $500,000 represented "open lines of credit used in the general course of doing business and or for civil disputes that might occur from one statement period to another." In his cover letter dated December 7, 1987, Appellant stated that "[t]here has been no substantial change in my financial condition since the date of the attached financial statement." Following a jury trial, Appellant was convicted of making a false statement to a federally insured financial institution in violation of § 1014.

II.

The elements of a § 1014 violation are that: (1) the defendant made a false statement to a federally insured bank; (2) he did so for the purpose of influencing the bank's action; (3) the statement was false as to a material fact; and (4) he made the false statement knowingly. *United States v. Smith*, 29 F.3d 914, 916 (4th Cir.), *cert. denied*, 63 U.S.L.W. 3348 (1994); *United States v. Whaley*, 786 F.2d 1229, 1231 (4th

Cir. 1986); *United States v. Bonnette*, 663 F.2d 495, 497 (4th Cir. 1981), *cert. denied*, 445 U.S. 951 (1982).

First, Appellant concedes that the institution in question, Guaranty, is federally insured. Furthermore, Appellant's statement on his loan application to Guaranty that there were no outstanding judgments against him was false because InterFirst had obtained a $2,000,000 judgment against him in May 1987. *See United States v. Haddock*, 956 F.2d 1534, 1551 (10th Cir.), *cert, denied*, 61 U.S.L.W. 3257 (1992); *United States v. Trexler*, 474 F.2d 369, 370-11 (5th Cir.), *cert. denied*, 412 U.S. 929 (1973); *United States v. Shriver*, 842 F.2d 968, 976 n.11 (7th Cir. 1988).

Second, considering the facts in the light most favorable to the Government, the evidence supports the jury's finding that Appellant made the false statement for the purpose of influencing the bank's lending decision. The intent to influence can be shown by proof that the false statement had the capacity to influence the bank. *United States v. Faulkner*, 17 F.3d 745, 769 (5th Cir.), *cert. denied*, 63 U.S.L.W. 3262 (1994). Appellant's false statement on his loan application had the capacity to influence Guaranty's lending decision because the false statement directly related to Appellant's ability to repay the loan. Guaranty's officers testified that their loan decision would have been influenced by their knowledge of the $2,000,000 judgment against Appellant. *See United States v. Glassey*, 715 F.2d 352, 353-54 (7th Cir. 1983). Although Appellant alleges that he had no intent to cheat the bank, an intent to cheat the financial institution is not an element of the offense under § 1014. *United States v. Bell*, 535 F.2d 886, 888 (5th Cir. 1976).

Third, Appellant's statement was false as to a material fact. As with the intent to influence the bank's action, materiality is demonstrated by showing that the false statement had the capacity to influence the bank's action. *Whaley*, 786 F.2d at 1232. Again, the record contains ample

evidence that Appellant's false statement had the capacity to influence Guaranty's lending decision.

Finally, viewing the evidence in the light most favorable to the Government, there was sufficient evidence to find that Appellant knowingly omitted the $2,000,000 judgment on the loan application. The $2,000,000 judgment obtained against Appellant in May 1987 was too large and too recent to have been omitted by accident or mistake on Appellant's loan application in December 1987. Furthermore, Appellant was involved in the real estate business and was familiar with loan transactions.

Accordingly, we affirm Appellant's conviction and sentence. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 94-5603
CR-93-120-C

FILED: December 11, 1995
ENTERED: December 11, 1995

UNITED STATES OF AMERICA
Plaintiff - Appellee

v.

THOMAS J. CURTIS, JR.
Defendant - Appellant

On Petition for Rehearing with
Suggestion for Rehearing in Banc

The appellant's petition for rehearing and suggestion for rehearing in banc were submitted to this Court. As no member of this Court or the panel requested a poll on the suggestion for rehearing in banc, and

As the panel considered the petition for rehearing and is of the opinion that it should be denied,

IT IS ORDERED that the petition for rehearing and suggestion for rehearing in banc are denied.

For the Court,
/s/ Bert M. Montague
CLERK

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA

UNITED STATES OF AMERICA
v.
THOMAS J. CURTIS, JR.

ENTERED: August 11, 1994

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November, 1, 1987)

Case Number: 93-00120-C

Dennis W. Dohnal, Esquire
R.P. Cornelius, Esquire
Defendant's Attorney

The Defendant: was found guilty on count 2s of the superseding indictment after a plea of not guilty.

Accordingly, the defendant is adjudged guilty of such count(s), which involve the following offenses:

Title & Section	Nature of Offense
18:1014	False statement on loan application.

Date Offense Concluded	Count Number(s)
7/23/93	2s

The defendant is sentenced as provided in pages 2 through 5 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

The defendant has been found not guilty on count(s) 1s, 3s, 4s, & 5s./ he Court dismissed Counts 6s through 20s.

Count 21s is dismissed on the motion of the United States.

It is ordered that the defendant shall pay a special assessment of $50.00, for count 2s, which shall be due immediately.

IT IS FURTHER ORDERED that the defendant shall notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

Defendant's Soc. Sec. No.: 452-74-5024

Defendant's Date of Birth: 2/6/47

Defendant's Mailing Address:
1440 Brazos Drive, Apt. 124
Huntsville, TX 77340

Defendant's Residence Address:
SAME AS ABOVE

July 29, 1994
Date of Imposition of Sentence

/s/ Jackson L. Kiser
Signature of Judicial Officer

JACKSON L. KISER
CHIEF UNITED STATES DISTRICT JUDGE
Name & Title of Judicial Officer

11 August 1994
Date

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of Count 2s - 72 hours.

The Defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons, as notified by the United States marshal in Houston, TX.

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of Count 2s - 5 years.

SPECIAL CONDITIONS OF SUPERVISED RELEASE

While on supervised release, the defendant shall not commit another federal, state or local crime and shall not illegally possess a controlled substance. The defendant shall comply with the standard conditions that have been adopted by this court (set forth below). If this judgment imposes a restitution obligation, it shall be a condition of supervised release that the defendant pay any such restitution that remains unpaid at the commencement of the term of supervised release. The defendant shall comply with the following additional conditions:

Defendant shall be under house arrest for a period of 6 months and shall be monitored by electronic device, if possible.

When defendant's income exceeds necessary living expenses a portion shall be used to pay judgments in their legal priority.

Defendant shall not possess any controlled substance or illegal drugs.

Defendant shall abide by the standard conditions of supervised release adopted by this Court.

Defendant shall furnish his probation officer complete and accurate financial reports quarterly or more frequently as directed by his probation officer and furnish any additional financial information as directed by his probation officer.

Defendant shall perform 200 hours of community service as directed by his probation officer.

Defendant shall not open any additional lines of credit or apply for any loans without permission of his probation officer.

STANDARD CONDITIONS OF SUPERVISION

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal, state or local crime. In addition:

1. the defendant shall not leave the judicial district without the permission of the court or probation officer;
2. the defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month;
3. the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4. the defendant shall support his or her dependents and meet other family responsibilities.

5. the defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;

6. the defendant shall notify the probation officer within 72 hours of any change in residence or employment;

7. the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician;

8. the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;

9. the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;

10. the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;

11. the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;

12. the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;

13. as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

STATEMENT OF REASONS

The court adopts the factual findings and guideline application in the presentence report except (see attachment, if necessary): Defendant is granted a credit of 2 points for acceptance of responsibility changing the Total Offense Level from 6 to 4.

Guideline Range Determined by the Court:

Total Offense Level: 4
Criminal History Category: I
Imprisonment Range: 0 to 6 months
Supervised Release Range: 3 to 5 years
Fine Range: $500.00 to $1,000,000

Fine is waived or is below the guideline range, because any income defendant accumulates over normal living expenses will be used to repay judgments.

The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines.

IN THE
UNITED STATES DISTRICT COURT
FOR THE
WESTERN DISTRICT OF VIRGINIA
AT ROANOKE,
DECEMBER, 1993 , SESSION

UNITED STATES OF AMERICA

v.

THOMAS JOSEPH CURTIS, JR.

Criminal Number 93-00120

Entered: July 23, 1993

SUPERSEDING INDICTMENT

INTRODUCTION TO COUNTS ONE THROUGH THREE

1. At all times material to this Indictment, Guaranty Savings & Loan Association was a savings and loan association whose accounts were insured first by the Federal Savings and Loan Insurance Corporation (FSLIC) and then later by the Federal Deposit Insurance Corporation (FDIC).

2. THOMAS JOSEPH CURTIS, JR., and his wife, Paulette Griffith Curtis, arrived in the Charlottesville, Virginia area in 1984 with virtually no monetary resources. THOMAS JOSEPH CURTIS, JR., met and cultivated a business relationship with three wealthy businessmen, William Burruss, Alton F. Martin (deceased) and L.F. Wood, each of whom owned substantial real estate in the Charlottesville area.

3. Between 1984 and 1989, THOMAS JOSEPH CURTIS, JR., set up various business entities which were owned or controlled by himself or his wife, Paulette G. Curtis. Using these business entities together with loans and personal guarantees from Burruss, Martin, and Wood, THOMAS JOSEPH CURTIS, JR., acquired and attempted to develop numerous pieces of real estate.

4. One of these business entities was the Mechunk Creek Stables Land Trust ("Land Trust") which was created on or about February 13, 1984. Paulette G. Curtis subsequently obtained 100% beneficial interest in the Land Trust. The Land Trust held certain parcels of real estate, including Mechunk Creek Stables, a tract of over 200 acres in Albemarle County, Virginia. On or about December 8, 1987, THOMAS JOSEPH CURTIS, JR., and Paulette G. Curtis applied for a $112,000.00 loan from Guaranty Savings & Loan to purchase a lot from the Land Trust.

5. Guaranty Savings & Loan required THOMAS JOSEPH CURTIS JR., to provide, among other things, a loan application and a current financial statement to obtain the loan.

6. The loan application asked the question, "Are there any outstanding judgments against you?", to which THOMAS JOSEPH CURTIS, JR., on or about December 8, 1987, answered "No", when , in fact, THOMAS JOSEPH CURTIS, JR., knew that an Agreed Final Judgment in the amount of $2,000,000.00 had been filed against him in Harris County, Texas, on May 21, 1987.

7. On May 21, 1987, an Agreed Final Judgment against THOMAS JOSEPH CURTIS, JR., in the amount of $2,000,000.00 was filed in the Harris County Court in Harris County, Texas. This Agreed Final Judgment was filed after THOMAS JOSEPH CURTIS, JR., failed to pay a debt in accordance with a Settlement Agreement dated January 21, 1987.

8. The above described $2,000,000.00 judgment was the result of a lawsuit filed by Interfirst Bank on or about January 15, 1982, seeking monetary recovery from THOMAS JOSEPH CURTIS, JR. THOMAS JOSEPH CURTIS, JR., was notified of the lawsuit against him on or about February 3, 1982.

9. In the process of applying for the $112,000.00 loan described above, on or about December 8, 1987, THOMAS JOSEPH CURTIS, JR., furnished a copy of a March 31, 1987, financial statement to Guaranty Savings & Loan, which he updated with the statement, dated December 7, 1987, "There has been no substantial change in my financial condition since the date of the attached financial statement", when in fact the above described $2,000,000.00 Agreed Final Judgment was not mentioned in his financial statement.

10. Between 1984 and 1989, THOMAS JOSEPH CURTIS, JR., attempted to develop numerous properties in the Charlottesville area. In doing so, THOMAS JOSEPH CURTIS, JR., obtained loans and other forms of credit himself, through one of his business entities, or through one of the three businessmen mentioned above, amassing a total debt of approximately $14,628,907.00.

COUNT ONE

The Grand Jury charges:

1. Paragraphs 1 through 10 of the Introduction to Counts One Through Three are incorporated herein by reference as though fully set forth herein.

2. THOMAS JOSEPH CURTIS, JR., the defendant, devised a scheme or artifice to obtain monies, funds and credits owned by and under the custody and control of Guaranty Savings and Loan by means of false and fraudulent pretenses and representations.

3. It was part of the scheme and artifice to obtain money and funds by means of false pretenses and representations that the defendant made false representations on his loan application for a $112,000.00 loan from Guaranty Savings & Loan and also submitted a false financial statement in an effort to obtain that loan.

4. Between on or about August 12, 1987, and on or about December 7, 1987, in furtherance of the scheme, the defendant, THOMAS JOSEPH CURTIS, JR., submitted a false loan application to Guaranty Savings & Loan wherein he answered "No" to the question "Are there any outstanding judgments against you?" when THOMAS JOSEPH CURTIS, JR., knew that there was a $2,000,000.00 judgment against him.

5. On or about December 8, 1987, the defendant, THOMAS JOSEPH CURTIS, JR., made a false statement and representation to Guaranty Savings & Loan concerning the accuracy of his March 31, 1987, financial statement, wherein he represented that there had been no substantial changes in his financial condition since the date of the financial statement. THOMAS JOSEPH CURTIS, JR., knew this representation was false when submitted in December 1987, because the financial statement failed to list a $2,000,000.00 judgment obtained against him on May 21, 1987.

6. Between on or about August 12, 1987, and on or about December 8, 1987, in the Western District of Virginia, the defendant, THOMAS JOSEPH CURTIS, JR., executed and attempted to execute the scheme and artifice to obtain money and funds from Guaranty Savings & Loan, a financial institution, by means of false pretenses and representations, as set forth above.

7. In violation of Title 18, United States Code, Section 1344.

COUNT TWO

The Grand Jury charges:

1. Between on or about August 12, 1987, and on or about December 7, 1987, in the Western District of Virginia, the defendant, THOMAS JOSEPH CURTIS, JR., knowingly made a false statement to Guaranty Savings & Loan, a financial institution the accounts of which were insured by the Federal Savings and Loan Insurance Corporation and the Federal Deposit Insurance Corporation, for the purpose of influencing in some way the action of a bank upon an application for a loan in the amount of approximately $112,000.00.

2. Specifically, the defendant, THOMAS JOSEPH CURTIS, JR., on an application for a real estate loan for the purchase of a residence, falsely answered "No" to the question "Are there any outstanding judgments against you?" when THOMAS JOSEPH CURTIS, JR., knew that there was a $2,000,000.00 judgment against him.

3. In violation of Title 18, United States Code, Section 1014.

COUNT THREE

The Grand Jury charges:

1. Paragraphs 2, 3, 7, 8 and 10 of the Introduction to Counts One Through Three are incorporated herein by reference as though fully set forth herein.

2. THOMAS JOSEPH CURTIS JR., the defendant, devised a scheme or artifice to obtain monies, funds and credits owned by and under the custody and control of Sovran Bank, National Association, ("Sovran"), now known as NationsBank, a financial institution whose accounts were insured by the Federal Deposit Insurance Corporation, by means of false and fraudulent pretenses and representations.

3. It was part of the scheme and artifice to obtain money and funds by means of false pretenses and representations that the defendant made false representations on his financial statement to Sovran to maintain his creditworthiness and to support his application for an unsecured personal loan in the amount of $25,000.00 from Sovran.

4. Between on or about July 16, 1986, and on or about December 16, 1986, in furtherance of the scheme, the defendant, THOMAS JOSEPH CURTIS, JR., submitted a false financial statement, dated March 31, 1986, to Sovran wherein he failed to disclose an ongoing civil lawsuit liability of $3,855,429.40, which subsequently resulted in a $2,000,000.00 judgment on May 21, 1987.

5. Between on or about July 16, 1986, and on or about December 16, 1986, in the Western District of Virginia, the defendant, THOMAS JOSEPH CURTIS, JR., executed and attempted to execute the scheme and artifice to obtain money and funds from Sovran Bank, National Association, now known as NationsBank, a financial institution whose accounts were insured by the Federal Deposit Insurance Corporation, by means of false pretenses and representations, as set forth above.

6. In violation of Title 18, United States Code, Section 1344.

INTRODUCTION TO COUNTS FOUR THROUGH TWENTY-ONE

1. A person who is in bankruptcy has an obligation to fully and truthfully disclose all assets and all financial information to the Trustee in bankruptcy, to answer all questions on documents and schedules fully and truthfully, and that obligation continues throughout the course of the bankruptcy proceeding.

2. On or about September 16, 1989, Thomas Joseph Curtis died leaving a sizable estate. THOMAS JOSEPH CURTIS, JR., knew of his father's death and was one of seven beneficiaries of his father's estate.

3. On or about October 2, 1989, THOMAS JOSEPH CURTIS, JR., and Paulette G. Curtis, were placed in involuntary bankruptcy in the Charlottesville Division of the United States Bankruptcy Court for the Western District of Virginia by their creditors. W. Stephen Scott, Esquire, was appointed to serve as Trustee in the bankruptcies.

4. On or about November 7, 1989, THOMAS JOSEPH CURTIS, JR., was notified by letter from the executor of his father's estate that he was a beneficiary of the estate. A copy of his father's will was included with this notification.

5. On or about February 14, 1990, in a Rule 341 Meeting of Creditors in the bankruptcy case, THOMAS JOSEPH CURTIS, JR., testified under oath as to the following:

> Q. Do you expect any inheritance in next six months?
>
> A. (CURTIS) No, I do not.

6. On or about February 14, 1990, in a Rule 341 Meeting of Creditors, THOMAS JOSEPH CURTIS, JR., testified under oath as to the following:

> Q. There has been a great deal of questioning and focus on Alabama,Virginia, and Texas, and let me just askyou straight on other deposits or property: Do you have any interest in any sorts of property whatsoever or any sort of deposit anywhere in the world -

A. (CURTIS) Nowhere in the world.
Q. -- other than what you have testified about today?
A. (CURTIS) That's correct. Other than -- okay, than the real estate in Texas.

7. Between March 20, 1990, and December 13, 1991, the following eleven (11) checks drawn on his father's estate were made payable to THOMAS J. CURTIS, JR., and were subsequently negotiated by, or on behalf of, THOMAS JOSEPH CURTIS, JR.:

Date	Check Number	Amount
March 20, 1990	489952	$ 5,000.00
May 3, 1990	514765	10,000.00
May 22, 1990	522049	12,000.00
June 7, 1990	534188	5,000.00
August 17, 1990	567326	20,000.00
October 2, 1990	592100	10,000.00
October 30, 1990	603648	10,000.00
December 12, 1990	726134	10,000.00
June 19, 1991	819208	6,000.00
July 25, 1991	837894	8,935.62
December 13, 1991	904369	494.39
	Total =	$97,430.01

THOMAS JOSEPH CURTIS, JR., never told the Bankruptcy Trustee about his inheritance and took steps to conceal his receipt, possession and use of these funds from the Bankruptcy Trustee by using his relatives' bank accounts, by using wire transfers of funds, and by dealing in cash.

COUNT FOUR

The Grand Jury charges:

1. Paragraphs 1 through 7 of the Introduction to Counts Four Through Twenty-One are hereby incorporated by reference as if fully set forth herein.

2. On or about March 20, 1990, in the Western District of Virginia and elsewhere, THOMAS JOSEPH CURTIS, JR., did knowingly and fraudulently conceal from the Bankruptcy Trustee, an officer of the United States Bankruptcy Court charged with the control and custody of the debtor's property, property belonging to the bankruptcy estate of THOMAS JOSEPH CURTIS, JR., that is , Check Number 489952 drawn on his father's estate, payable to THOMAS J. CURTIS, JR., in the amount of $5,000.00.

3. In violation of Title 18, United States Code, Section 152.

COUNT FIVE

The Grand Jury charges:

1. Between on or about March 20, 1990, and on or about April 3, 1990, in the Western Judicial District of Virginia and elsewhere, the defendant, THOMAS JOSEPH CURTIS, JR., did knowingly and willfully conduct and attempt to conduct a financial transaction affecting interstate commerce, specifically, the use, for his own benefit, of funds from his inheritance Check Number 489952 in the amount of $5,000.00 deposited into Lowell Leatherman's First Interstate Bank checking account, which involved the proceeds of a specified unlawful activity, that is, concealment of assets from the Trustee in bankruptcy, knowing that the transaction was designed in whole or in part to conceal and disguise the true nature, location, source, ownership and control of the proceeds of the specified unlawful activity and that while conducting and attempting

to conduct such financial transaction THOMAS JOSEPH CURTIS, JR., knew that the property involved in the financial transaction, that is, funds in the amount of $5000.00, represented the proceeds of some form of unlawful activity.

2. In violation of Title 18, United States Code, Sections 1956 (a) (1) (B) (i) and 2.

COUNT SIX

The Grand Jury charges:

1. Paragraphs 1 through 7 of the Introduction to Counts Four Through Twenty-One are hereby incorporated by reference as if fully set forth herein.

2. On or about May 3, 1990, in the Western District of Virginia and elsewhere, THOMAS JOSEPH CURTIS, JR., did knowingly and fraudulently conceal from the bankruptcy Trustee, an officer of the United States Bankruptcy Court charged with the control and custody of the debtor's property, property belonging to the bankruptcy estate of THOMAS JOSEPH CURTIS, JR., that is, Check Number 514765 drawn on his father's estate, payable to THOMAS J. CURTIS, JR., in the amount of $10,000.00.

3. In violation of Title 18, United States Code, Section 152.

COUNT SEVEN

The Grand Jury charges:

1. Between on or about May 3, 1990, and on or about May 15, 1990, in the Western Judicial District of Virginia and elsewhere, the defendant, THOMAS JOSEPH CURTIS, JR., did knowingly and willfully conduct and attempt to conduct a financial transaction affecting interstate commerce, specifically, the use, for his own benefit, funds from his inheritance Check Number 514765 in the amount of

$10,000.00, part of which was deposited into George Holloway's Virginia First Savings Bank checking account, which involved the proceeds of a specified unlawful activity, that is, concealment of assets from the Trustee in bankruptcy, knowing that the transaction was designed in whole or in part to conceal and disguise the true nature, location, source, ownership and control of the proceeds of the specified unlawful activity and that while conducting and attempting to conduct such financial transaction THOMAS JOSEPH CURTIS, JR., knew that the property involved in the financial transaction, that is, funds in the amount of the $10,000.00, represented the proceeds of some form of unlawful activity.

2. In violation of Title 18, United States Code, Sections 1956 (a) (1) (B) (i) and 2.

COUNT EIGHT

The Grand Jury charges:

1. Paragraphs 1 through 7 of the Introduction to Counts Four Through Twenty-One are hereby incorporated by reference as if fully set forth herein.

2. On or about May 22, 1990, in the Western District of Virginia and elsewhere, THOMAS JOSEPH CURTIS, JR., did knowingly and fraudulently conceal from the bankruptcy Trustee, an officer of the United States Bankruptcy Court charged with the control and custody of the debtor's property, property belonging to the bankruptcy estate of THOMAS JOSEPH CURTIS, JR., that is, Check Number 522049 drawn on his father's estate, payable to THOMAS J. CURTIS, JR., in the amount of $12,000.00.

3. In violation of Title 18, United States Code, Section 152.

COUNT NINE

The Grand Jury charges:

1. Paragraphs 1 through 7 of the Introduction to Counts Four Through Twenty-One are hereby incorporated by reference as if fully set forth herein.

2. On or about June 7, 1990, in the Western District of Virginia and elsewhere, THOMAS JOSEPH CURTIS, JR., did knowingly and fraudulently conceal from the bankruptcy Trustee, an officer of the United States Bankruptcy Court charged with the control and custody of the debtor's property, property belonging to the bankruptcy estate of THOMAS JOSEPH CURTIS, JR., that is, Check Number 534188 drawn on his father's estate, payable to THOMAS J. CURTIS, JR., in the amount of $5,000.00.

3. In violation of Title 18, United States Code, Section 152.

COUNT TEN

The Grand Jury charges:

1. Between on or about June 7, 1990, and on or about July 25, 1990, in the Western Judicial District of Virginia and elsewhere, the defendant, THOMAS JOSEPH CURTIS, JR., did knowingly and willfully conduct and attempt to conduct a financial transaction affecting interstate commerce, specifically, the use, for his own benefit, of funds from his inheritance Check Number 534188 in the amount of $5000.00 deposited into Joan Leatherman's NCNB Texas checking account, which involved the proceeds of a specified unlawful activity, that is, concealment of assets from the Trustee in bankruptcy, knowing that the transaction was designed in whole or in part to conceal and disguise the true nature, location, source, ownership and control of the proceeds of the specified unlawful activity and that while conducting and attempting to conduct such financial

transaction THOMAS JOSEPH CURTIS, JR., knew that the property involved in the financial transaction, that is, funds in the amount of $5000.00, represented the proceeds of some form of unlawful activity.

2. In violation of Title 18, United States Code, Sections 1956 (a) (1) (B) (i) and 2.

COUNT ELEVEN

The Grand Jury charges:

1. Paragraphs 1 through 7 of the Introduction to Counts Four Through Twenty-One are hereby incorporated by reference as if fully set forth herein.

2. On or about August 17, 1990, in the Western District of Virginia and elsewhere, THOMAS JOSEPH CURTIS, JR., did knowingly and fraudulently conceal from the bankruptcy Trustee, an officer of the United States Bankruptcy Court charged with the control and custody of the debtor's property, property belonging to the bankruptcy estate of THOMAS JOSEPH CURTIS, JR., that is, Check Number 567326 drawn on his father's estate, payable to THOMAS J. CURTIS, JR., in the amount of $20,000.00.

3. In violation of Title 18, United States Code, Section 152.

COUNT TWELVE

The Grand Jury charges:

1. Between on or about August 17, 1990, and on or about August 28, 1990, in the Western Judicial District of Virginia and elsewhere, the defendant, THOMAS JOSEPH CURTIS, JR., did knowingly and willfully conduct and attempt to conduct a financial transaction affecting interstate commerce, specifically, the use, for his own benefit, of funds from his inheritance Check Number 567326 in the amount of $20,000.00, part of which was deposited into Joan

Leatherman's NCNB Texas checking account, which involved the proceeds of a specified unlawful activity, that is, concealment of assets from the Trustee in bankruptcy, knowing that the transaction was designed in whole or in part to conceal and disguise the true nature, location, source, ownership and control of the proceeds of the specified unlawful activity and that while conducting and attempting to conduct such financial transaction THOMAS JOSEPH CURTIS, JR., knew that the property involved in the financial transaction, that is, funds in the amount of $20,000.00, represented the proceeds of some form of unlawful activity.

2. In violation of Title 18, United States Code, Sections 1956 (a) (1) (B) (i) and 2.

COUNT THIRTEEN

The Grand Jury charges:

1. Paragraphs 1 through 7 of the Introduction to Counts Four Through Twenty-One are hereby incorporated by reference as if fully set forth herein.

2. On or about October 2, 1990, in the Western District of Virginia and elsewhere, THOMAS JOSEPH CURTIS, JR., did knowingly and fraudulently conceal from the bankruptcy Trustee, an officer of the United States Bankruptcy Court charged with the control and custody of the debtor's property, property belonging to the bankruptcy estate of THOMAS JOSEPH CURTIS, JR., that is, Check Number 592100 drawn on his father's estate, payable to THOMAS J. CURTIS, JR., in the amount of $10,000.00.

3. In violation of Title 18, United States Code, Section 152.

COUNT FOURTEEN

The Grand Jury charges:

1. Paragraphs 1 through 7 of the Introduction to Counts Four Through Twenty-One are hereby incorporated by reference as if fully set forth herein.

2. On or about October 30, 1990, in the Western District of Virginia and elsewhere, THOMAS JOSEPH CURTIS, JR., did knowingly and fraudulently conceal from the bankruptcy Trustee, an officer of the United States Bankruptcy Court charged with the control and custody of the debtor's property, property belonging to the bankruptcy estate of THOMAS JOSEPH CURTIS, JR., that is, Check Number 603648 drawn on his father's estate, payable to THOMAS J. CURTIS, JR., in the amount of $10,000.00.

3. In violation of Title 18, United States Code, Section 152.

COUNT FIFTEEN

The Grand Jury charges:

1. Paragraphs 1 through 7 of the Introduction to Counts Four Through Twenty-One are hereby incorporated by reference as if fully set forth herein.

2. On or about December 12, 1990, in the Western District of Virginia and elsewhere, THOMAS JOSEPH CURTIS, JR., did knowingly and fraudulently conceal from the bankruptcy Trustee, an officer of the United States Bankruptcy Court charged with the control and custody of the debtor's property, property belonging to the bankruptcy estate of THOMAS JOSEPH CURTIS, JR., that is, Check Number 726134 drawn on his father's estate, payable to THOMAS J. CURTIS, JR., in the amount of $10,000.00.

3. In violation of Title 18, United States Code, Section 152.

COUNT SIXTEEN

The Grand Jury charges:

1. Paragraphs 1 through 7 of the Introduction to Counts Four Through Twenty-One are hereby incorporated by reference as if fully set forth herein.

2. On or about June 19, 1991, in the Western District of Virginia and elsewhere, THOMAS JOSEPH CURTIS, JR., did knowingly and fraudulently conceal from the bankruptcy Trustee, an officer of the United States Bankruptcy Court charged with the control and custody of the debtor's property, property belonging to the bankruptcy estate of THOMAS JOSEPH CURTIS, JR., that is, Check Number 819208 drawn on his father's estate, payable to THOMAS J. CURTIS, JR., in the amount of $6,000.00.

3. In violation of Title 18, United States Code, Section 152.

COUNT SEVENTEEN

The Grand Jury charges:

1. Between on or about June 19, 1991 and on or about June 25, 1991, in the Western Judicial District of Virginia and elsewhere, the defendant, THOMAS JOSEPH CURTIS, JR., did knowingly and willfully conduct and attempt to conduct a financial transaction affecting interstate commerce, specifically, the use, for his own benefit, of funds from his inheritance Check Number 0819208 in the amount of $6000.00 deposited into Joan Leatherman's First City, Texas checking account, which involved the proceeds of a specified unlawful activity, that is, concealment of assets from the Trustee in bankruptcy, knowing that the transaction was designed in whole or in part to conceal and disguise the true nature, location, source, ownership and control of the proceeds of the specified unlawful activity and that while conducting and attempting to conduct such financial

transaction THOMAS JOSEPH CURTIS, JR., knew that the property involved in the financial transaction, that is, funds in the amount of $6000.00, represented the proceeds of some form of unlawful activity.

2. In violation of Title 18, United States Code, Sections 1956 (a) (1) (B) (i) and 2.

COUNT EIGHTEEN

The Grand Jury charges:

1. Paragraphs 1 through 7 of the Introduction to Counts Four Through Twenty-One are hereby incorporated by reference as if fully set forth herein.

2. On or about July 25, 1991, in the Western District of Virginia and elsewhere, THOMAS JOSEPH CURTIS, JR., did knowingly and fraudulently conceal from the bankruptcy Trustee, an officer of the United States Bankruptcy Court charged with the control and custody of the debtor's property, property belonging to the bankruptcy estate of THOMAS JOSEPH CURTIS, JR., that is, Check Number 837894 drawn on his father's estate, payable to THOMAS J. CURTIS, JR., in the amount of $8,935.62

3. In violation of Title 18, United States Code, Section 152.

COUNT NINETEEN

The Grand Jury charges:

1. Between on or about July 25, 1991, and on or about August 1, 1991, in the Western Judicial District of Virginia and elsewhere, the defendant, THOMAS JOSEPH CURTIS, JR., did knowingly and willfully conduct and attempt to conduct a financial transaction affecting interstate commerce, specifically, the use, for his own benefit, of funds from his inheritance Check Number 0837894 in the amount of $8935.62, a portion of which was deposited into Joan

Leatherman's First City, Texas checking account, which involved the proceeds of a specified unlawful activity, that is, concealment of assets from the Trustee in bankruptcy, and that while conducting and attempting to conduct such financial transaction THOMAS JOSEPH CURTIS, JR., knew that the property involved in the financial transaction, that is, funds in the amount of $8935.62, represented the proceeds of concealing bankruptcy assets, and further THOMAS JOSEPH CURTIS, JR., knew that the transaction was designed in whole or in part to conceal and disguise the true nature, location, source, ownership and control of the funds.

2. In violation of Title 18, United States Code, Sections 1956 (a) (1) (B) (i) and 2.

COUNT TWENTY

The Grand Jury charges:

1. Paragraphs 1 through 7 of the Introduction to Counts Four Through Twenty-One are hereby incorporated by reference as if fully set forth herein.

2. On or about December 13, 1991, in the Western District of Virginia and elsewhere, THOMAS JOSEPH CURTIS, JR., did knowingly and fraudulently conceal from the bankruptcy Trustee, an officer of the United Sates Bankruptcy Court charged with the control and custody of the debtor's property, property belonging to the bankruptcy estate of THOMAS JOSEPH CURTIS, JR., that is, Check Number 904369 drawn on his father's estate, payable to THOMAS J. CURTIS, JR., in the amount of $494.39.

3. In violation of Title 18, United States Code, Section 152.

COUNT TWENTY-ONE

The Grand Jury charges:

1. Paragraphs 1 through 7 of the Introduction to Counts Four Through Twenty-One are hereby incorporated by reference as if fully set forth herein.

2. On or about February 16, 1990, as part of his bankruptcy proceeding, THOMAS JOSEPH CURTIS, JR., signed, under penalty of perjury, a "Statement of Financial Affairs for Debtor Engaged in Business", including Schedules of All Liabilities and All Property of Debtor.

3. In that "Statement", THOMAS JOSEPH CURTIS, JR., declared, in response to Question 11b, that he had made no assignment of his property for the benefit of his creditors within 2 years preceding the filing of his bankruptcy case.

4. In that "Statement", THOMAS JOSEPH CURTIS, JR., also declared, in response to Question 13, that he had made no payments, in whole or in part, on any loans during the year preceding the filing of his bankruptcy case.

5. In that "Statement" in response to Question 14b, which asked for any other transfers or any other disposition of property, THOMAS JOSEPH CURTIS, JR., failed to disclose any inheritance or assignment of an inheritance.

6. On Schedule B-3, which is attached to the February 16, 1990, "Statement of Financial Affairs for Debtor Engaged in Business", THOMAS JOSEPH CURTIS, JR., was required to list any property transferred under assignment for the benefit of creditors within 120 days preceding the filing of his bankruptcy case. He responded "None".

7. On Schedule B-3, THOMAS JOSEPH CURTIS, JR., was required to list any property of any kind not otherwise scheduled. He responded "None".

8. On October 29, 1992, in a deposition taken during the course of his bankruptcy case, on page 89, THOMAS JOSEPH CURTIS, JR., testified that the inheritance money was not his, that the money belonged to his sister, Joan Leatherman, by virtue of an assignment he made to her on September 30, 1989. THOMAS JOSEPH CURTIS, JR., identified a copy of a written assignment in his bankruptcy deposition.

9. On July 22, 1993, in an appearance before the Federal Grand Jury, THOMAS JOSEPH CURTIS, JR., testified under oath as follows:

QUESTION:

Didn't you assign her your estate under the will?

ANSWER:

Yeah. And that was mine to assign.

10. On or about February 16, 1990, in the Western District of Virginia, the defendant, THOMAS JOSEPH CURTIS, JR., knowingly and fraudulently made a false statement, certificate, declaration, or verification under penalty of perjury, specifically, as a part of his bankruptcy proceeding, THOMAS JOSEPH CURTIS, JR., signed under penalty of perjury a "Statement of Financial Affairs for Debtor Engaged in Business", which includes Schedules of All Property and All Liabilities of Debtor, in which he failed to disclose an inheritance received from his father's estate, failed to disclose any assignment of his inheritance from his father's estate, and failed to disclose any other transfer or disposition of property to anyone, including his sister, Joan Leatherman.

11. In violation of Title 18, United States Code, Section 152.

A TRUE BILL, this 23rd day of July, 1993.

/s/
FOREMAN

/s/
UNITED STATES ATTORNEY

Excerpts of the
Transcript of Testimony Before
The Honorable Jackson L. Kiser, Chief Judge,
with Attached Exhibits
Beginning April 11, 1994

B. Walter - Direct Pages 7,8

A It was held at the bank offices on Bellaire Boulevard in Houston, Texas.
Q Did anyone in particular instigate the meeting?
A I believe, yes, Mr. Curtis and his lawyer had requested it be set up.
Q And what occurred at the meeting?
A I was there; Mr. Jack Welch, the Chairman of the Board of the bank, was there; Mr. Curtis was there, and I believe Mr. Paxton Lowery, his lawyer, was there.
Q Did Mr. Curtis give you any reasons why he had a particular interest in settling this lawsuit?
A Yes, he did.
Q Would you tell the jury what he told you?
A He said that he had some business opportunities in Virginia, that he needed to borrow some money in order to do these projects, that he was not able to borrow the money with our suit on file, and that he -- if he disclosed those, the bank wouldn't loan him the money. He wanted to reduce it to a sum certain and get an agreed payout period, so that he could afford to have a cash flow to pay the bank a sum, to satisfy the lawsuits, so he could borrow the money to do his projects.
Q And did you, representing the bank, reach a settlement agreement with Mr. Curtis?
A Yes, we all -- Yes, all four of us reached a settlement agreement. Mr. Welch for the bank, myself, Mr. Curtis and his lawyer, Mr. Lowery, reached a settlement agreement.

THE COURT: Mr. Walter, you may have mentioned the date of settlement meeting.

When was that? Do you have that?

THE WITNESS: Your Honor, that was in January of 1987. I don't know the exact date, but it was January of '87.

THE COURT: Thank you, sir.

BY MS. WAERING:

Q You have before you what has been marked as Government's Exhibit 1-B.

A Yes.

Q Do you recognize that?

A Yes.

Q And what is it?

A Well, it's all but the final page of the settlement agreement.

Q And what's the final page then?

A The final page is the last page of the agreed final judgment.

Q Okay. Is that a certified copy by the clerk in Harris County, Texas?

A Yes, it appears to be a certified copy of the first

* * *

B. Walter - Direct Pages 10-13

A (continuing) We recited the dispute, how much the bank had sued Mr. Curtis, Paulette Curtis and Tom J. Curtis for.

We recited the fact that Mr. Curtis, Mrs. Curtis and the corporation had threatened to filed counter-claims but had not.

We recited that we desired to settle the case and dispose of it without the necessity for a trial, and then we said, "Here's the deal."

We said that on or before May the 20th, 1987, which was about four months from the day it was signed, that Tom Curtis would pay $300,000.00 by delivering a cashier's check to the Chairman of the bank, Jack Welch, at the bank offices in Houston, Texas.

Then on or before November 20th, 1988, which was about eighteen months later, Tom Curtis would pay an additional $100,000.00 by cashier's check to the bank, and then on or before May 20th, 1990, which was about three years later, he would make a final payment of $100,000.00 cashier's check to the bank.

We recited that the time was of the essence in this agreement, that those payments had to be made in good funds on or before those dates.

When we said that we will -- that Tom Curtis will agree and sign an agreed final judgment, that if these payments, the 300,000, 100,000 and $100,000.00 payments were made by cashier's check on time, that we would not record the judgment; we would give the judgment back to Mr. Curtis, and we'd file a motion to dismiss the lawsuit, and that if he made the $500,000.00 payments on time that he would be -- that he would be released of any further liability to the bank, to my client.

We agreed to release Paulette Curtis from the lawsuit, and the judgment was only as against Tom J. Curtis, Jr., personally, and Tom J. Curtis, Jr., Inc., but not against Paulette Curtis.

Mr. Curtis and Paulette Curtis and Tom J. Curtis, Jr., Inc. agreed to release any claims which they might have otherwise had against the bank as part --

Q Whatever claims that --

A Whatever claims they might have because of any dealings between them and the bank were being released as part of this settlement agreement.

We agreed that we would present this settlement agreement to the court, explain to the court that we would like to have the case retained on the court's docket pending these payouts, and that if the court would not agree to retain the case on the docket, to give Mr. Curtis the opportunity to pay the agreed amounts, that this deal would be void, and we'd just go ahead and try the case. So that was the essence of the agreement.

He would pay $500,000.00 by a date certain. If he did not, then a $2,000,000.00 judgment would be signed and entered against him.

Q All right. And did Mr. Curtis sign the settlement agreement?

A Yes, he did.

Q And did he sign it in your presence?

A It's my recollection that he did.

Q All right. Did Mr. Curtis sign the agreed final judgment?

A Yes, he did.

Q Did he sign that in your presence?

A It's my recollection that the did.

Q On May 20th, 1997--1987 did the bank receive $300,00.00?

A No.

Q What did you do?

A I called Paxton Lowery.

Q Who is he?

A He was Mr. Curtis's lawyer, who had appeared in this lawsuit.

I told him the bank had not received the funds, and that I intended to appear before Judge Wilson and present the final judgment to him to be signed.

I then went to the court and presented the judgment, the agreed judgment, to Judge Wilson.

Q What happened then?

A He told me to come back the next morning, which I did.

He asked me if the money had been paid. I told him no. And he signed the judgment on the 21st day of May 1987.

Q What happened to the judgment once it was signed by the judge?

A It was recorded in the judgment records of Harris County, and it's my recollection that we abstracted it, filed it in the abstract of judgment records in Harris County.

Q And what does that mean in terms of the legal significance of that judgment?

A As far as it being signed and entered of record, it was an agreed final judgment, where the court declared and ordered and decreed that Mr. Curtis owed the bank $2,000,000.00 plus interest at the rate of ten percent from January 21st, 1987 until it was paid in full.

Q It was no longer contingent?

A No.

Q It was no longer contested?

A No.

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B. Walter- Direct Pages 19-22

the March of '86?

Q Yes

A No, there's no listing of it.

Q At the top it says, "3/31/86, page 2"

A That's correct.

Q Now did--

A It had not been--

The COURT: I'm getting confused now.

I thought the judgment didn't go down until May of '87.

The WITNESS: That's correct, Your Honor.

The COURT: And this is a 1986 financial statement?

MS. WAERING: Excuse me. I'm sorry.

BY MS. WAERING:

Q Do you see anything on there reflecting the 3.8 million dollar lawsuit on his March 31, 1986 financial statement?

A No. There is a contingent liability, note 7, that says, $500,000.00, but note 7 does not mention the lawsuit. It talks about an audit by the Internal Revenue Service, and it makes no mention whatsoever of the lawsuit that was on file at that time.

Q As part of accounting practice, if you were a party to a lawsuit, would you list that under contingent liabilities on the financial statements?

A If it were material to your financial statement it should be listed as a contingent liability.

Q Would you have considered this lawsuit material to a financial statement?

A Yes, and it--A lawsuit in the amount of 3.8 million dollars would be material to this financial statement.

Q All right. Now if you would, look at Government's Exhibit Number 3, and I'm sorry to have spoken of the wrong --the wrong direction here.

Now we're talking about the judgment.

A Yes.

Q First, we're going to talk about the lawsuit again here.

This is a March 31, 1987 financial statement, Government Exhibit Number 3; is that correct?

A Part of it is, yes.

Q And the financial statement itself is dated March 31, '87; is that correct?

A That's correct.

Q And under his liabilities do you see referenced any notation of the 3.8 million dollar lawsuit?

A No.

Q Do you see a contingent liability note?

A Yes, contingent liability note 7, $500,000.00.

Q And what does note 7 say?

A "Note 7, General: Open lines of credit used in general course of doing business and/or for civil disputes that might occur from one statement period to another."

Q And do you consider that as being informative of the 3.8 million dollar lawsuit?

A Well, it wasn't a lawsuit then; it was a judgment, but it's not on here anywhere.

Q All right. He signed this--It's dated March 31st, '87, which is before the judgment; is that correct?

A No, it's after the judgment.

Q Look at the top of it.

A Oh, yes, that's before the judgment. March 31st, 1987, the date of the financial statement, is before the judgment, but it's signed on October the 2nd, 1987.

Q So it's affirmed as being accurate on October 2nd of '87?

A Appears to be.

Q And that's after the judgment?

A That's correct.

Q And then is there a cover sheet to that financial statement?

A Yes.

Q And what does the cover sheet say?

A "There has been no substantial change in my financial condition since the date of the attached financial statement", and it appears to be -- I --It appears to be signed, and it appears to be signed on December the 7th, 1987.

MS. WAERING; Your Honor, I ask that Government's Exhibits 2 and 3 be admitted.

MR. CORNELIUS: No objection.

THE COURT: Let them be admitted.

MS. WAERING: I have no further questions of this witness at this time, Your Honor.

Please answer Mr. Cornelius' questions.

(Balance sheet was received in evidence as Government Exhibit Number 2.)

(Financial statement was received in evidence as Government Exhibit Number 3.)

MR. CORNELIUS: May I proceed, Your Honor?

THE COURT: Yes, sir.

CROSS EXAMINATION

BY MR. CORNELIUS:

Q Mr. Walter, did I understand you to say that it's your opinion that standard accounting principles require that a person list on their financial statement any lawsuits to which they might be a party?

A If it's a contingent liability that would be material, yes sir.

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B.Walter-Cross Pages 32-36

MR. CORNELIUS: Your Honor, I've kinda made a 1, and I've put a line under it. I can rewrite it and make it clearer when everybody leaves, I guess.

BY MR. CORNELIUS:

Q And the settlement is for Tom Curtis to pay 300,000, 100,000 and 100,000, and the dates are May the 20th of '87, and is it November the 20th of '88, or something like that?

A Yes, sir, I believe that's correct.

It is November the 20th, '88.

Q '88?

A And May the 20th, 1990.

Q And on the same day you all all signed off on a final judgment?

A The agreed final judgment was signed on the same day.

Q Now this final judgment is not signed by a judge or on file; is that correct?

A Not at that time.

Q Then as we've developed at this point, is it absolutely clear, no question about it, that this was not a final judgment any time in 1986?

A That's correct.

Q So any financial statements or loan applications, if they had been filed in 1986, could not correctly reflect that he had either a $500,000.00 judgment or a $2,000,000.00 judgment on him for this lawsuit?

Is that a fair statement?

A He had no judgment against him in this lawsuit in 1986.

Q Okay.

A Now whether he was asked on a financial statement to disclose the existence of the lawsuit, I don't know, but he had no judgment.

Q Okay.

A In 1986.

Q All right. Then we come down to May --

Did these things -- I thought these things actually happened on the 20th.

Aren't these dated January the 20th?

A No, sir. My secretary notarized his signature and his wife's signature on the 21st day of January 1987.

Q Okay.

A And the settlement agreement itself says it's effective --

Q May the 20th?

A No, it says the agreement shall be -- is executed this 21st day of January 1987.

Q Okay, but the first due date is May the 20th?

A That's correct.

Q So it's May 21 that you're over at the court getting the judgment signed by the judge?

A That's correct. Judge Wilson signed it on May the 21st, 1987.

Q Did you make any attempt to have that judgment recorded in Virginia?

A I did.

Q When was that?

A In the fall -- Following the summer of 1987 I retained an attorney named Mr. Berkley, I believe, here in Virginia, and forwarded him the -- I communicated with him. He told me what he needed. I got him a certified and exemplified copy of the judgment so that he could do what was appropriate to register it here in Virginia.

Q So he did it basically, but you're just telling me that's what you did?

A I was --

Q I can't get you to testify to what he did, I don't guess. You don't know.

A Well, I have a certified copy of something he filed with the court in Virginia, but I don't know what he did.

Q All right.

A I believe it's certified.

MR. CORNELIUS: Could I have this marked?

THE CLERK: It will be marked as Defendant's Number 1.

BY MR. CORNELIUS:

Q Could that possibly be what you're referring to?
A This appears to be the papers that were filed here in the Commonwealth of Virginia.
Q And what is that?
A Well, this is several things.

The first page is a notice of motion for judgment directed to Tom J Curtis, Jr.

Q Let me stop you there just for a second, so we don't have to go through them all. I don't think I need to.

That is a motion to try to get the judgment entered in Virginia, isn't it?

A Appears to be, yes, sir.
Q What's the date on that?
A It -- The notice to Mr. Curtis appears to be dated the 24th of November 1987.
Q Do you know when that judgment actually got recorded in Virginia?
A No, sir.
Q I accept your answer.

Do you know - No knowing the exact date, do you know that it wasn't until 1988 though before it got recorded?

A I do not know.
Q Okay.
A I referred it to Mr. Berkley for him to handle, and I don't know when he actually did it.

MR. CORNELIUS: I'd like to retrace that diagram as a demonstrative piece of evidence and mark it as Walter Number 1 or something like that, and I have no further questions of the witness, unless you want me to retrace that now.

THE COURT: You mean rewrite it?

MR. CORNELIUS: Rewrite it.

THE COURT: Where it's legible?

MR. CORNELIUS: Where it's legible.

THE COURT: All right.

MR. CORNELIUS: We'll mark it as Walters Number 1 or Walter Number 1. Excuse me.

THE WITNESS: Thank you.

MS. WAERING: How about Defendant's Number 2?

THE CLERK: Defendant's 2.

(Chart in re Texas judgment was received in evidence as Defendant Exhibit Number 2.)

THE CLERK: The next two exhibits; the letter dated May 17, 1989 will be marked as Government's 4 and letter dated 5/27/89 as Government's 5.

THE COURT: Ms. Waering, was there any objection to

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it, all of the exhibits in the book have been shown to defense counsel?

MR. CORNELIUS: Yes, they have, and I don't have any objection.

THE COURT: They're not objected to.

MR. ECKERT: With that, Your Honor, maybe we can save a little time by formally moving their admission.

THE COURT: Yes. Since they're not objected to, just go ahead and mark them, admit them as exhibits without going through the interim process.

MR. ECKERT: All right, Your Honor.

(Government Exhibits
marked and admitted into evidence)

BY MR. ECKERT:

Q Mr. Riggle, let me first direct your attention to the application there. Could you refer to the exhibit number, sir? They put a yellow sticky --

A Number 26.

Q Okay. Is that your loan application, sir?

A Yes.

Q What is that for? Could you tell us about that?

A After accepting the employment offer, I came back to Charlottesville a second time -- that would have been the first part of October of 1985 -- to look for a place to live. At that time, Tom talked to me about a house that he built on State Route 648 and told me that he wanted to get that out of a construction loan into a permanent mortgage. It was suggested that I purchase the house, that that would either be a place for my family to live or a property that we could lease out.

Q "We" meaning who?

A Tom and I.

Q Okay, sir. And what happened after that? Is that what this --

A And as result of that, then I -- while I was here in Charlottesville looking for a place to live, that's when I filled out this residential loan application for a mortgage loan.

Q All right. Now, let me ask you, sir, I believe you also signed it on the back; is that correct? The second page?

A Yes.

there.

Q The second, sir, you'll see a check in the amount of, I think it's $1,112. Do you see that?

A Yes.

Q Whose signature appears on that, sir?

A This is Tom Curtis' signature.
Q And what does it say it's for?
A It's made out to Guaranty Savings & Loan, $1,112. And it's says, "For loan fee."
Q Okay, sir. Thank you.

Now, did you ever have any communication after the house -- did you ever come to learn that the bank, in fact, foreclosed on this property?

A After Tom Curtis told me that now the loan was out of my name and it was all taken care of, I decided that I ought to contact Guaranty Savings & Loan directly myself to be sure that everything was all right and I had no further responsibility on this loan. When I did, I found out from Guaranty Savings & Loan that the house had already been sold at foreclosure.
Q Did you know about the foreclosure, sir?
A No, I did not.
Q Did you find out whether there was any

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Susan Gallion - Direct Page 243

Q Are you employed?
A Part-time.
Q Where are you employed now?
A At the First Baptist Church here, in Charlottesville.
Q Were you ever employed at Guaranty Savings & Loan?
A Yes, I was.
Q And when were you employed at Guaranty Savings & Loan?
A June of 1986 through March of 1991.
Q And what were you duties at Guaranty Savings & Loan?

A I was a closing and servicing supervisor, and then I became a loan officer towards the end.
Q And as a closing -- what did you say closing --
A Manager.
Q What were your duties as a closing manager or supervisor?
A After every loan was approved, I would take the loan and coordinate the closing of the documents with an attorney. I would also fund the loan. So if everything was in order, I would fund it. And then I would send it to the servicing

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there on July 6th, 1987?
A Tom's calling in reference to this loan. It says Mr. Riggle is no longer in his employment. He wanted to bring the loan current and convert it to permanent financing.
Q All right. And do you know what happened next in regard with following through on that request?
A We began to process the loan for permanent financing. And I believe it was approved several months thereafter, and then it took even several months thereafter to get it to the closing point.
Q All right. If you would, look at the loan committee approval sheet. Do you see that in front of you?
In the notebooks it's Exhibit 4E.
A (Indicating in the affirmative)
Q What is the date of that loan approval?
A August the 12th.
Q Of 1987?
A That's correct.
Q And that is -- it also indicates there that it was approved by the senior loan committee; is that correct?

***

Susan Gallion - Direct Page 264

A Probably Steve Stacy.
Q All right. And this loan did not close?
A It did not.
Q Did it proceed to foreclosure?
A It did.
Q Do you recall when?
A In December.
Q Do you have any independent memory of when the foreclosure was held on the Riggle loan?
A I believe it was in January.
Q Would you look at the Riggle loan file and see if you see any notes in there that refresh your recollection on that date?
A They proceeded in January, and it looks like it went to foreclosure on February 29th, 1988.
Q Sold on the courthouse steps?
A That is correct.
Q And was there a deficiency at that time?
A Yes, there was.
Q Approximately how much? Can you tell from the file?
A $7,742.14.
Q And can you tell from your file whether or not that was ever paid?
A It was.

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Susan Gallion - Direct Page 268

Q The one from Cliff McClure to Steve Stacy enclosing Mr. Riggle's letter?
A (Pause) I don't appear to have that.

Q You don't have that?
A No. I'm sorry, it is part of an exhibit, the ending part of an exhibit, Number 42.
Q And basically what is that letter doing?
A Certifying the trustees for the Mechunk Creek Stables Land Trust are Cliff McClure and Robert M. Callaghan. It says that Mr. Riggle has no interest in the property whatsoever, and that if he did, he released any rights at that point.
Q All right. And on the same date on the Riggle loan, did Guaranty receive any payment on the Riggle loan? Do you see a check there for -- on July 28th, 1987?
A Yes.
Q And what is that check for?
A Interest.
Q Past due interest?
A That's correct.
Q And do you have a recollection of who paid that?
A Mr. Curtis.

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Susan Gallion - Direct Pages 270-273

permission for the witness to approach the charts.

THE COURT: All right. Is it close enough? Can you-all read the chart from that distance, the folks on the end?

THE JURY: I can.

THE COURT: You've got good eyes.

THE JURY: We can't see it on this end.

THE COURT: All right. Move it up a little closer.

BY MS. WAERING:

Q Ms. Gallion, when you received this residential loan application, did you review its contents?

A Yes.

Q And did you review the questions -- I can't even read -- these questions apply both to the borrower and the co-borrower?

A That's correct.

Q And did you review the answers to the questions listed there on the loan application?

A Yes.

Q And the loan application is --

THE COURT: 4I.

MS. WAERING: Thank you, Judge.

BY MS. WAERING:

Q And the first question is what?

A Are there any outstanding judgments against you?

Q And what is the answer?

A No, for both the borrower and co-borrower.

Q And the fourth question down, what is that?

A Are you a party to any lawsuit?

Q And what's the answer there?

A General business lawsuits, if any.

Q And then there is a reference to see a financial statement?

A Yes.

Q And which financial statement is referenced?

A The one he presented along with this.

Q Or in the past?

A That's correct.

Q 3/31/86 is the reference there?

A Uh-huh.

Q Now, if there had been a "yes" on, Are there any outstanding judgments against you, would you have noticed that?
A Absolutely.
Q What would you have done if there had been any "yes"?
A We wouldn't have closed the loan until the outstanding judgments had been satisfied.
Q All right. The loan didn't close anyway, but would that have made a difference to Guaranty Savings & Loan?
A Absolutely.
Q What was the reason the loan didn't close?
A There weren't enough funds to close it.
Q Basically it was in Mr. Curtis' hands? If he came up with the money, it would have closed?
A Absolutely.
Q Whereas if the answer would have been "yes," it would have been your hands?
A That's right. It would have never gotten to that point. It would have never come to me.
Q In the question, Are there any lawsuits against you -- I can't read it exactly, but the question on lawsuits, it says, General business lawsuits, if any. Did that put you on notice that he was actually involved in a lawsuit?
A Yes.
Q It did?
A It would have, yes.
Q Did you follow up on any questions?
A Well, yes. We questioned him about that.
Q You questioned Mr. Curtis or Mr. McClure or who?
A It would have been Mr. Curtis' at the time we took the loan application.
Q All right. Now, this loan application came in with the letter from Cliff McClure?
A That's right's.
Q Hand delivered?

A Well, initially when it was taken.
Q Did you take it?
A No, I did not.
Q Do you know who took it?
A Mr. Stacy.
Q Do you know that for sure, or do you just assume that?
A I don't know that for sure.
Q Do you recognize whose handwriting is on the application?
A Some is Mr. Curtis', and it appears that some is Mr. Stacy's.
Q All right. So you know Mr. Curtis' handwriting well enough to recognize some of it?

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Susan Gallion - Cross Pages 275-276

Q Where is Guaranty Savings & Loan located?
A The corner of Rio and Route 29 in Albemarle County.
Q And is that in the Western District of Virginia?
A Yes.
Q To the best of your knowledge?
A To the best of my knowledge.
MS. WAERING: Nothing further. Sorry.

CROSS
EXAMINATION

BY MR. CORNELIUS:

Q Ms. Gallion, my name is R. P. Cornelius. I'm Mr. Curtis' attorney. I've never met you or talked to you about this case before, have I?

A No, sir, you have not.

Q Who paid the deficiency when the loan was finally paid off after the house was foreclosed upon, the bank received the profits, and there was $7,700 received by you?

A Mr. Curtis did.

Q Okay. Let me see if I can get this in a nutshell for you.

The bank had $112,000 out to Tim Riggle; is that a fair statement?

A That is correct.

Q Mr. Curtis came in and offered to take the loan over for $112,000?

A That's correct.

Q Okay. The bank chose not to do that?

A No.

Q Okay. The bank denied his application to take the loan over or to get a new loan?

A No. We approved his application to take the loan over.

Q Okay. Well, who made the decision not, then, to do the loan?

A Well, he did.

Q He did. Okay.

And then the bank foreclosed on the property, sold the property. And what was it sold for; do you recall?

A I don't remember.

Q Was it more that $112,000?

A I don't believe so; no, sir.

Q Okay. Weren't there a lot of accrued interest and attorneys fees on top of the $112,000?

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his financial statement, and all of those items, and considered them to considered those to be in good order?

A That is correct.

MS. WAERING: Did that clarify it?

THE COURT: I think.

BY MS. WAERING:

Q On the promissory note -- or maybe you can read it better on the collateral bond, but one of those two exhibits, I believe it may be 30 or 31. Does it show the Commissioner making a note there that the note is due in credit of $114,222.85?

A That is correct.

Q Would that be the amount of money received at the foreclosure sale?

A Yes.

Q So a little more than 112 was received?

A That's right.

(Pause)

THE COURT: I have a question I forgot to ask, and maybe you an tell me. How does the collateral bond obligate Mr. Riggle any more than a promissory note does?

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MR. CORNELIUS: I do have one more point, if I might?

THE COURT: All right, sir.

RECROSS
EXAMINATION

BY MR. CORNELIUS:

Q Ma'am, had the loan been funded, had -- well, that's the wrong term, I think.

Had the loan closed, was Mr. Curtis going to get any money?

A No, sir.

Q No matter what would happen in this scenario, he never was going to get a dime out of this; right?

A Not --

Q Okay. Well, I got to make the record complete. I think we know what you just said, but I don't think it's going to appear that way on the record.

No matter how the transaction -- strike that.

The way this transaction came about,

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Susan Gallion - Recross Pages 284-285

I apologize to the Court. Strike all of that.

Collect my thoughts here a second.

If you-all would have funded the loan and Mr. Curtis would have been -- obtained the control of ownership of that property, and if he would have sold it in the future, no matter what he would have sold it for, you would have obtained your first lien position and gotten your $112,000 back; correct?

A That is correct.

Q Okay. Am I fair in saying that on this entire transaction every dime that was paid, either for loan fees or interest or whatever; any money that was paid you, it was paid by Mr. Curtis?

A That is correct.

Q Now, the -- you never made him the loan. In fact, the house went into foreclosure, was sold, the bank got their money back minus -- the bank got their money back including whatever back interest, or attorney fees, or expenses you had; correct?

A That is correct.

Q Minus $7,000 that Mr. Curtis made up for at that closing?

A That is correct.

Q Okay. Let me ask you a question. Does it appear to you that Mr. Curtis was trying to cheat the bank out of any money in these transactions?

A No, it does not.

MR. CORNELIUS: Pass the witness.

MS. WAERING: Nothing further, Your Honor.

THE COURT: You may step down. Thank you.

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WITNESS STOOD ASIDE

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MS. WAERING: Steve Stacy, Your Honor.

THE COURT: I assume that you don't plan to recall Ms. Gallion? I saw that she was sitting in the courtroom.

MS. WAERING: Oh, I think she was just giving me back the loan files.

Your Honor, could we just have a quick moment?

THE COURT: Sure. Go ahead and swear in the witness.

THE CLERK: Place your left hand on the Bible and raise your right hand.

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probably late September of '84.

Q What were your job titles at Guaranty Savings & Loan?

A I was vice president in charge of mortgage lending.

Q And during your time there, was that your title the entire time?

A I believe so, yes. I think I was the assistant vice president first and later become vice president.

Q And during that time did you work with Mr. Curtis on obtaining loans?

A Yes. We had done -- I've done quite a bit of work with him from time to time.

Q And during the time that you were at Guaranty Savings & Loan, was it insured by the federal government?

A Yes.

Q Either the FDIC or the FFLIC?

A FFLIC I think it was at that time.

Q And that stands for?

A Federal Savings & Loan Insurance Corporation

Q Thank you.

Now, do you recall anything about a

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when this loan was discussed?

A Yes. Yes.

Q At the time the loan was discussed, did anyone mention having any knowledge, or to your knowledge, did anyone know anyone -- did you know?

I guess that's what I need to ask. Excuse me. It's late in the day, again.

Did you know at that time that Mr. Curtis had a 2 million-dollar judgment against him?

A No, I did not.

Q Did you know about any judgments against him?

A The only judgments -- if there were any outstanding judgments, the monies to pay off those judgments had been supposedly held in escrow by an attorney. And they were -- they would have been relatively minor.

Q Now, are you talking about a 1984 letter in the file?

A I don't recall the date, but there is documentation to that effect in the file, I believe.

MS. WAERING: Mr. Marshal, would you hand this to the witness, please.

BY MS. WAERING:

Q Prior to your testimony today, have you had an opportunity to look, at least briefly, at some of the copies of the Guaranty loan files? I believe the brown paper one is the Curtis file, and the --

A Yes.

Q -- light egg colored one is the --

A Yes.

Q -- Riggle file?

A Yes, I have.

Q Would you -- would it take you a while, or would you be able to quickly find what we're talking about?

A The letter is dated February 29, 1984.

Q That's an old letter in there talking about old judgments from Texas, belonging to Tom Curtis, Jr., Inc., isn't it?

A That's right.

Q What I'm asking you about is, did you know about any recent judgments in 1987 against Mr. Curtis personally?

A No.

Q And specifically, did you know about a 2 million-dollar judgment from Texas against Mr. Curtis personally?
A No, we did not.

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Stephen Stacy - Cross Page 299

A No. I'd have to say that's changed.
Q Okay. Did you do -- did you run a credit check on Mr. Curtis?
A Yes, I believe we did.
Q Did that credit check come back with a number of hits?
A There are two different credit reports that I'm aware of. One of them listed several outstanding judgments, and I believe that one came about. As a result of that credit report, we were given the letter stating that any monies owed were being held by the attorney in Texas.
Q Okay. Well, let me go at it this way. Prior to this $112,000 loan being applied for, the one that's in question today, you had done credit checks on Mr. Curtis?
A Uh-huh.
Q Okay. And they revealed judgments?
A Yes, sir.
Q Okay. And they revealed other problems, financial problems?
A That's right.
Q He had slow pays and no pays, and stuff like that on his credit report:
A That's correct.

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Guaranty Savings & Loan that it's pretty easy to see that Guaranty or at least the loan committee was pretty hesitant to make the loan on Keswick?

A There was an awful lot of discussion, yes, sir.

Q So being that your bank was involved pretty heavily, financially with the bank; I mean, savings and loan was involved pretty heavily with Keswick, so I guess you-all were pretty interested in keeping up with what was going on out there?

A Yes, I think so.

Q Do you remember the article that came out in the newspaper in '86 with Mr. Curtis' picture?

THE COURT: Do you have the paper exhibit, Mr. Cornelius?

MR. CORNELIUS: I think it's D3. It's Defendant's Number 3.

BY MR. CORNELIUS:

Q And you've seen Defendant's Number 3 there, and you can see that it's a newspaper article from Thursday, February 27, 1986; correct?

A Yes.

Q It's in evidence.

I don't know if you have an independent recollection now of reading that back in February of 1986, but my question is: Would that be something that perhaps would catch your attention?

A Yes, I think so.

Q Okay. I don't know if you've read that article in a while, and I can direct you to the parts, but is it pretty clear in that newspaper article that Mr. Curtis was being sued in Texas for approximately $4 million?

A I don't think so.

Q Okay.
A Well, I'd have to read it again, but --
Q If you'll look at under the swimming pool -- I mean, the picture of that is --

THE COURT: You can approach him and point it out if you care to.

MR. CORNELIUS: Okay.

BY MR. CORNELIUS:

Q Why don't you just start reading there? Read it out loud, "Other banks . . .
A Other battles -- do you mean, other battles?
Q Yes.
A Other battles have taken longer and the stakes have been higher?
Q Yes.
A (Reading) In May 1984 Curtis faces charges in Harris County, Texas, that he stole more than 1.2 million from two Houston banks and check cashing schemes. Prosecutors allege that Curtis made numerous transfers to create false balances. Curtis in the written statement he submitted before the interview called it a very low point in my life.

There was a problem, as Curtis outlined it in his statement, with a rapid increase in interest rates that began about 1981. We got caught in a prime that went through the roof in nine months. It went from nine percent monthly to 23 percent monthly. Our debt service went from 3,000 a day to over 12,000 to 13,000 a day, just on the open-ended construction loans that we had, the statement went on.

One of the banks in town which was loaning us money for this project even went to the point of allowing us to overdraw our accounts to the extent of $1 million to pay costs to obtain an inspection. The bank that was allowing us to overdraw the accounts froze our accounts. When they did

this, we found ourselves in a situation that resulted in our selling off over $40 million worth of projects, over $40 million worth of real estate in approximately a nine-month period to just catch what was falling at that time due to the high interest rates.

When bank examiners find problems in a bank such as this, such as they did in this case, the procedure requires trying to locate individuals involved, Curtis said in the statement. After a month long trial Curtis was cleared of criminal charges.

I think the record stands that there has been no misuse or misapplication of any monies which they have referred to being a check type, Curtis said in an interview in December in Keswick. Never was that the case ever.

Meanwhile one of the banks has filed a lawsuit to recover the amount of money originally stolen as well as 2.5 million the bank says Curtis owes following foreclosure on several other of his properties.

Q Okay. Hold on one second, and I'll let you continue. He's saying right there in the newspaper back in February 27, of 1986, that he's being sued for 1.2 million, which was the allegation of the check type and an additional 2.5 million. Would that be correct?

A That's what this article says, yes.

Q All right. Keep going.

A Okay.

The suit filed in 1981 by First State Bank of Bell Aire, now Interfirst Bank Southwest, Curtis was ultimately interviewed when told the questions would included his battles accused of him through Riggle, his Keswick property project manager and former associate in Houston, said they reportedly talked with a juror in this trial before he would consent to an interview. In a telephone interview, the juror, Michael S. Powers, said the jury believed the money

prosecutors said was stolen involved a series of unsecured loans approved by the bank officials.

Apparently confirming events that he wasn't guilty of the charges against him, Powers said, I think the evidence will speak for itself. Curtis sent The Daily Progress a copy of a letter Powers mailed to Curtis in Houston in 1980 four or five months after Curtis' trial.

In the letter to Powers, working directly for a Houston architectural firm, asked Curtis to consider hiring his firm for development work. Powers said the firm which he joined after the trial never did any business for Curtis.

As for the bank's pending civil lawsuit asking Curtis for nearly $4 million, Curtis said he hopes to resolve the dispute as quickly as possible.

Q Okay. you can stop right there.

Would it be fair of me to say that it was pretty much common knowledge that Curtis was being sued for approximately $4 million by the bank in Houston?

A No. I don't believe, I don't believe so.

Q Okay. Did you tell Officer Bond that back on November the 26th of '91 that Mr. Curtis did talk about a situation in Texas where a bank loaned his line of credit and Curtis was suing the bank?

A Curtis was suing the bank was the story we got.

Q All right, sir. Okay. That's what you told Bond?

A That's correct.

Q That was your recollection of that conversation with Tom?

A That's correct.

Q Okay. And was -- do you recall whether or not Bill Bailey was present on at least one occasion where Tom told you that he was being sued in Houston by a bank?

A I don't have any recollection of that.

Q Is it possible that that occurred and you just don't remember it?

A That's possible.

Q Okay. But it's certainly not possible to claim that this lawsuit for $4 million, or 3.8, or whatever it was, was a secret?

A Well, like I said, the story we received was that Curtis was going to be the plaintiff, was the plaintiff or was going to be the plaintiff.

Q Okay. Well, that's not what the newspaper said.

A That's correct. But also, this is two years down the road into the relationship as well.

Q Okay. But this is a year before this $112,000 loan, or maybe it's not a year. February, yeah. It's a year before the loan.

A That's correct.

Q So what your file really indicates is that when you did your credit check, he did have judgments against him, and you already knew that?

A That's correct.

Q He had all kinds of credit problems, and you knew that?

A Not to extent of $2 million.

Q Okay. But you knew he had credit problems?

A Sure.

Q Are you admitting with me that it's common knowledge that he had a $4,000,000 lawsuit pending in Texas?

A No, I'm not.

Q Okay. Okay. I want to talk to you about the specifics of the $112,000 loan, if you know them. Let me, just to save time, ask you this; how is it that Curtis could have cheated the bank out of money on that loan?

Tell the jury how he could have effected a fraud on the bank and come away from that bank with any money.

MS. WAERING: Your Honor, I just want to clarify that the issue and the charge is not that the bank would lose money or he would cheat the bank out of money. The charge

is that he presented false statements to the bank in an attempt to get a loan and that he had a scheme to defraud the bank.

Now, if circumstances down the road had been different, that may have occurred. But the point is, there's an intent in there. And it's an intent issue. So I think that the question goes beyond what the charge is. And I don't want the jury to be confused on what has to be proved.

MR. CORNELIUS: I'd like to respond to that, Judge.

I think as part of your instructions to the jury later, you're going to have to tell that Mr. Curtis had the specific intent to cheat to cheat the bank.

THE COURT: And I think this goes to motivation. Whether there was motivation is relevant to that issue, whether there was a motive on Mr. Curtis' part to conduct a scheme to cheat the bank. So I will permit the questioning along those lines.

BY MR. CORNELIUS:

Q Tell the ladies and gentlemen how Mr. Curtis could have cheated the bank out of any money in this transaction.
A I don't think that the bank felt that we could have lost money on this transaction because we always --
Q Let me stop you just for a second. Let me confine you to my question.
A Uh-huh.
Q I'll To get you to go into that in a minute.
A Okay.
Q But you're not confined by what the bank felt. You've got hindsight as 20-20. You can look back on the plot or anything you want to. Tell them how Mr. Curtis could have cheated the bank out of any money in this transaction.
A I don't believe he could have.

Q Okay. Then how is it you can stand here or sit here in front of this jury under oath and say that today when you told me in November you don't think he intended to cheat the bank?

How is it that you can say today to this jury under oath that you now think he intended to cheat the bank out of money?

A Because he did not tell us a full story.

Q Okay. So how is he going to get any money?

A We -- what he continues to do is to bring in other investors. What he intended to do was to bring in other people.

Q Okay. I understand that's a statement, but it's not an answer to my question.

I want to know how he could have cheated the bank out of any money. He's not on trial for the Keswick venture. He's not on trial for that. He's only on trial for trying to cheat the bank out of, out of $112,000; okay? So tell us how he could have cheated the bank out of $112,000.

A I don't think he could have.

MR. CORNELIUS: Okay. I don't have any further questions.

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M. Clifton McClure - Direct Pages 341-344

A This was the transmittal to the loan company to perform the closing.

Q Who was this done on behalf of, sir?

A Tom Curtis.

Q And what was --

A And Paulette Curtis. Excuse me.

Q Now, there were a number of things that were included in there, some of which are pertinent to our being here today, many of which are not.

Let me ask you to go through additional documents that are before you that were sent in with your letter. And could you identify them by number, please?

A Okay. Exhibit 45 is the loan application from Tom and Paulette Curtis.

Q Now, did you fill that out, sir?

A No.

Q How did that come into your possession?

A It was delivered to me by Tom.

Q By the defendant?

A Yeah.

Q By the way, sir, you use the name Tom --

A Tom Curtis.

Q -- and I am, too, but do you see him present in the courtroom?

A Yes, I do.

Q Could you point him out, please?

A Right here (indicating.)

Q The man raising his hand?

A Right.

Q Okay. Thank you.

MR. ECKERT: For the record, your Honor, I believe he has identified the defendant.

THE COURT: All right.

BY MR. ECKERT:

Q Do you recall when that was delivered to you, sir?

A That would have been on the 4th of December.

Q Four days before you sent it into the bank?

A That's correct.

Q All right, sir. Now, the next document I believe -- well, tell me what you have up there.

A That's Exhibit 46.

Q What is that, sir?

A That's the No Substantial Change In Financial Condition.
Q Now, did you write that out, sir?
A No.
Q Who is that signed by?
A Tom Curtis.
Q And what is that dated?
A 12/7/87.

MR. ECKERT: For the record, your Honor, that would be 4K in the notebook.

BY MR. ECKERT:

Q I'm sorry. That was dated when?
A 12/7.
Q And who brought that to you, sir?
A Tom Curtis.
Q The defendant did?
A Yeah.
Q And how did he know to bring those items to you?
A On Monday morning, I received a small memo from Susan Gallion saying that we still --
Q Monday morning?
A December the 7th.
Q Okay.
A Tom had been by the office for about 30 minutes on Friday the 4th. And then on Monday, the 7th, I got a small memo from Susan Gallion saying that she still needed the financial statements and we needed to pay the '86 and '87 real estate taxes prior to closing. Then I got a call from Mike McKeefer who was trying --
Q Was he the president of --
A He was president of Guaranty.

The bank was anxious to close this loan. And we were trying to come up with a method to get around Tom having to fill out all these new financial statements. So Mike

McKeefer agreed that if Tom would prepare and sign a No Substantial Change In Financial Condition, we could proceed.

Q Now, that No Substantial Change In Financial Condition refers to an attached financial statement. What would that be, sir? Do you have that there?

A It's attached to this, but I never saw that. That was delivered directly to Guaranty Savings & Loan.

Q Okay. Do you, in your conversations with Mr. Curtis, have any idea about which financial statement he was speaking of?

A No, I didn't. I assumed that he was referring to the one that was mentioned on his residential loan application.

Q And which one was that, sir?

A It just says -- instead of filling out

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M. Clifton McClure - Cross Pages 351-354

Q Which is a lot of money.

A It sure is.

Q Now, getting to the $112,000 loan at Guaranty Savings & Loan, or at least the loan application, did I understand you to say that the bank was in a hurry December 7th '87 to close the loan?

A There was a construction loan on the property, and that was in -- that was delinquent. And as I recall, the bank examiners were putting a lot of pressure on them to do something about that loan.

We got -- I got a construction letter on October the 8th I think it was. We got the survey back on October the 16th, and I submitted my title application at that time. And then we got the water reports, the septic, the termite and everything to Guaranty. And then about the 4th, they were really anxious to get this closed.

Q Okay. The loan was in default?
A Yes.
Q And you know that that loan was in the name of --
A Tom Riggle.
Q Tim.
A Tim Riggle.
Q Tim Riggle.
A Tim Riggle.
Q And you said that you talked to Mike McKeefer, who was the president of the bank?
A That's correct.
Q And he said that in lieu of Tom preparing a complete new financial statement, if he would just sign a statement saying that there were no substantial changes, that that would be sufficient?
A That's correct.
Q Did you know at all during that time that Tom had a lawsuit pending down in Texas?
A Yes, I knew that it was pending. It was my understanding that he was the plaintiff, and he would be the successful party to that.
Q But you -- well, let's see. He was at least saying that he thought he was going to win that lawsuit?
A That's correct. His attorney supposedly was advising him that he would be the successful party, as I recall.
Q And who was that attorney?
A I don't recall.
Q Does Paxton Lowery ring a bell?
A No.
Q Okay. You don't know him?
A Sorry.
Q When did you find out, if you found out, that a judgment had been rendered against Tom?
A Actually, the way I found out -- this would have been in '88, I think, when they finally got around to docketing. I was in Fluvanna County doing a title search and I ran across

the judgment document in Fluvanna County. That was the first time that I knew that it was -- had been entered.

Q And did you tell Tom?

A I don't -- I'm sure I must have mentioned that when I was in Fluvanna I had found that it had been docketed. And I think I would have told him.

Q Would that judgment -- could that judgment have, in any way, affected the bank's lien -- let me rephrase that -- the savings and loan, Guaranty Savings & Loan's lien for $112,000 on the property there?

A No, no. And I'll explain that.

Q Okay.

A The land trust had prepared a deed to Paulette -- Tom and Paulette Curtis as tenants by the entirety. And tenants by the entirety is not -- the property is not subject to the debts of one party.

Q What does a financial statement that has on it "unaudited," what does that "unaudited" mean?

A Well, I'm speaking as a layman here. That's -- it means that the accountants haven't audited all of the figures that are on the statement. That's my understanding of not audited.

Q Okay.

A A certified public accountant has not audited the --

Q Oh, has not audited? Okay. In other words, if I prepared my own financial statement, I couldn't hold that out to be an audited financial statement, audited by some certified public accountant.

A No.

Q So I need to put on there "unaudited"; correct?

A Well, individuals usually don't put "unaudited" on there. The banks don't require them. Usually the requirement is for the like public issues, stock issues, or franchise holders and that kind of thing.

Q So if I did put it on there, I would just

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S. A. Carl Bond - Direct Page 364

A Yes, ma'am.
Q Are you familiar with Tom Curtis?
A Yes, ma'am.
Q Have you met him before today?
A Yes, ma'am.
Q Or before Monday. And do you see the fellow that you've met before here in the courtroom today, Tom Curtis?
A Yes, ma'am.
Q And where is he?
A He's seated at the defense table beside the defense counsel.

MS. WAERING: Your Honor, if the record will reflect that --

THE COURT: So show.

MS. WAERING: -- he has identified the defendant.

BY MS. WAERING:

Q Mr. Bond, when did you first become aware of Mr. Curtis?
A July of 1989.
Q And how did you first become aware of Mr. Curtis?

MR. CORNELIUS: Objection to the hearsay part of it if it's going to contain it, your Honor.

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S. A. Carl Bond - Direct Page 377

marked as Government Exhibit Number 65, and see if that might be a letter dated July 15th, 1987.

A Yes, ma'am. Exhibit Number 65 is a letter dated July 15th, 1987.

Q And what is the gist of that letter, and who's it from and who is it to?

A This is a letter from Paxton Lowery, an attorney in Houston, Texas, to Tom J. Curtis in Keswick, Virginia. It's regarding cause number 81-44215 in the 281st Judicial District Court of Harris County, Texas, regarding Texas Commerce Bank Chemical's successor and interest to Chemical Bank & Trust Company verses Tom J. Curtis, Jr., and Guaranty Bond State Bank.

And it goes on to say that Mr. Lowery was notified that the trial had been held in that matter on July 14th and a judgment was rendered in the amount of around $30,000 against Mr. Curtis. But the second paragraph says, In view of the judgment in favor of Interfirst Bank Southwest, this seems to been an inconsequential problem. However, I thought I would notify you as to the existence of the judgment and obtain your instructions.

Q And the Interfirst Bank said that judgment talked about there, is that the $2 million

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submission of those two items?

THE COURT: Yes.

MS. WAERING: Then the Government would rest. Well, we have one exhibit to admit. 123 or 133?

THE CLERK: 133.

MS. WAERING: I believe that was the chart, the hard copy chart of what was displaced to the jury. That is an updated version of what was in the juror notebook.

THE COURT: All right. Let that come in.

(Government Exhibit
admitted into evidence)

MS. WAERING: And, Madam Clerk, are all our exhibits now admitted that have -- except for those two items which were overruled or not admitted?

THE CLERK: Yes.

MS. WAERING: With that, I think the Government rests, your Honor.

THE COURT: Mr. Cornelius?

MR. CORNELIUS: Do you want to do the motions for judgment of acquittal now, or let me finish the rest with the jury and then do it, or what would you prefer?

THE COURT: Now's an appropriate time. They've rested.

MR. CORNELIUS: Comes now, Tom Joseph Curtis, Jr., defendant herein, and moves this Honorable Court for judgment of acquittal on all six counts in the indictment; those being counts 1, 2, 3, 4, 5, and 21, for the reason that the evidence is wholly insufficient to establish a crime, a crime alleged in any of the counts. And, specifically, I'll start with Count Number 3.

Count Number 3 is an 18 USC 1344 charge. The only allegation alleged in the indictment to be the scheme of artifice to defraud is that the defendant failed to list or failed to disclose a civil lawsuit liability of $3,000,855, which subsequently resulted in the $2 million judgment, and that's what the Government is alleging is the fraudulent misrepresentation. And that's the only thing that they're alleging.

Now, with respect to the $2 million judgment, they're saying that this crime happened in 1986, but the judgment wasn't rendered until 1987. So that should be of no consideration to the Court and actually should be deleted from the indictment, but particularly for the purposes of this motion for the Court's consideration.

The defendant's position is that there is no legal requirement, no position the Government can rely on that makes any requirement under law for the defendant to have done this, to have listed this.

The Court has heard all the evidence in the case. No witnesses have testified -- and I'm not aware of any duty or responsibility on the part of the defendant to list them. When you look at the statute, okay, all it says is knowing the executor can execute a scheme or artifice to defraud.

I guess that the Government's theory is that not listing something that you have no duty to list can become a scheme or artifice to defraud. And to clarify what I mean by that, this is the Count that is supported by a credit application that does not have any question about whether you're in a lawsuit or whether you have a judgment rendered against you.

THE COURT: It has a question of contingent liabilities. It does.

MR. CORNELIUS: No, not in the credit application.

THE COURT: What's that exhibit? Where's that in the tab?

MR. CORNELIUS: I don't know. I apologize.

THE COURT: It would be an early one.

MS. WAERING: I believe it's Number 20.

THE COURT: Well, I was wondering about it in the book. Here it is. It's behind Tab 3. No, that's contract. That's a real estate contract. Excuse me.

MS. WAERING: It's behind Tab 2. And the credit application is 2B.

THE COURT: Okay.

MR. CORNELIUS: I'll stand corrected if you can find it on there, but my recollection is there's no question like that on the credit application.

THE COURT: Well, the question is not there, but it's incorporated by reference, isn't it? It says, In support of

this, I have submitted a personal financial statement dated 3/31/86, and then the financial statement says --

MR. CORNELIUS: Okay.

THE COURT: -- contingent liabilities, none or only $500,000 based on --

MR. CORNELIUS: Yeah. I think you can certainly make that instruction, Judge.

Okay. That doesn't change my position.

THE COURT: I understand.

MR. CORNELIUS: My position is that whatever he was asked to submit by the bank, whatever he was specifically questioned about by the bank did not include a question concerning whether or not he was involved in a lawsuit somewhere. I think there is no responsibility. There's certainly none in the evidence that requires somebody to list that. He has submitted to the bank an unaudited financial statement. They've not questioned it in any way or challenged it in any way until five years after, seven year after the fact. And I think the evidence is insufficient to support a conviction under that count.

Do you want me to move to the next count, or let the Government answer now or --

THE COURT: Go ahead and do all of them, and I'll hear the Government.

MR. CORNELIUS: Okay. With respect to Counts 1 and 2, we have the same motion based upon the fact that the evidence is insufficient to support a finding of guilty.

Without making any attempt to try to recall the evidence and argue it to the Court, I know you remember it just as well as I do, I guess the essence of my motion is that reasonable minds could not conclude that the defendant had the -- I don't think the evidence established -- the Government's case established enough evidence to where reasonable minds could conclude that the defendant had the criminal intent necessary to defraud the bank in either of these two counts. I'm not arguing that -- what we argued

about in chambers about whether the scheme has to be successful or could be successful. I know it doesn't have to be successful.

My objection is that the evidence is insufficient upon a complete reading and in the light most favorable to the judgment -- most favorable to the Government to support a contingent that reasonable minds could conclude that the defendant had the criminal intent to do the fraudulent act that's alleged in the indictment. That's it on 1 and 2.

I want to call a witness -- I guess I should have already done this. I want to call a witness on the bankruptcy part. He's outside, and I can call him right now as an expert witness on the issue of whether or not the distribution --

THE COURT: I think that has to come after your case.

MR. CORNELIUS: No --

THE COURT: You don't take evidence at the close of the -- we're -- the only thing we're doing now is finishing the Government's evidence.

MR. CORNELIUS: Okay. Well, I can do it that way, but earlier, before the trial started and my witness was in Alabama, I mentioned to you that I would like to put him on for my record to establish at that time my motion to dismiss those counts and establish that in our understanding of the law that even that distribution on March the 20th would not be a part of the bankruptcy estate. And if you were to find that now, I mean, if you heard that evidence now and believed it, then you could instruct on that right now. If you want to, you can just hear it on my case.

THE COURT: Well, I don't know if it's -- it made me think a little differently. But in 40 years I've been practicing law, I've never taken evidence on a motion for a directed verdict.

MR. CORNELIUS: I think it's in the -- it's in the Rule, isn't it?

THE COURT: Well, it may be.

MR. CORNELIUS: It's in the rule that you can call witnesses on a motion. I don't have to, though, whether it's in the Rule or not. If you don't want me to, I won't.

THE COURT: Let's not.

MR. CORNELIUS: I can do it later. Fine.

Then just for the record for right now, our position is that Counts 4, 5, and 21, we move for a verdict of acquittal because the evidence is insufficient to support any of those three for the reason that the property, the $5,000 check is not an asset of the bankruptcy estate. And, therefore, that's a material element to their proof. And if that material element dies, then their case dies. And we move for 4, 5, and 21 to be dismissed.

With particularity now on Count 21, Count 21 is just basically the same thing as Count 4. Count 21 asks you to just consider everything that's in Count -- the preamble to Count 4, basically everything that's in Count 4. And then they just add some more, what they call, instances of false statements and ask for permission to convict him on the same bankruptcy fraud a second time.

And so my objection is that that whole count is duplicitous and is alleging the same thing that's alleged in Count 4. And the Government is trying to convict him twice for the same bankruptcy fraud. It's not alleged like -- the Government hasn't sought to make an allegation that says, Here's a preamble to how bankruptcy fraud is committed, and here are the acts that he did, each act constituting a different offense. They haven't done that. They just lumped them all together along with the acts alleged in Count 4 and said, That's an offense.

And the evidence is insufficient -- all of these allegations in here, the evidence is insufficient to even establish all of these allegations in here that are in Count 21. And so for that reason, we ask that -- for judgment of acquittal on Count 21.

And that is it.

THE COURT: All right, sir. Ms. Waering or Mr. Eckert?

MR. ECKERT: Your Honor, if I can start from what is freshest in my mind first, dealing with Counts 4 and 21, defense counsel did not point out to you what the statute says under which his client was charged. That's Title 18, United States Code, Section 152.

Count 4 clearly applies to a different paragraph than Count 21. We're talking about knowingly and fraudulently concealing from the trustee the $5,000 check in Count 4. In Count 21, he's being charged under a different paragraph; that paragraph being knowingly and false -- fraudulently making a false declaration, certificate, verification, and so forth. As well as -- I believe also as well as presenting -- well, they're just different paragraphs. Those two paragraphs are entirely different.

Count 21 deals with the assignment and so forth, and they're different paragraphs. It isn't that he's -- it's that he's basically presenting a falseness in his statements to the bankruptcy trustee. It's essentially perjury, although it's not called that.

Under Count 4, it's a concealment of $5,000. So they're entirely different things, and there are different elements to be proved under each one, your Honor.

THE COURT: Well, I'm not quite following you, Mr. Eckert. Both Count 4 and Count 21 are laid under the same code section.

MR. ECKERT: Correct. But they're different paragraphs. Count 21 is where he basically lies, and Count 4 is where he conceals or hides.

THE COURT: All right, sir.

MR. ECKERT: They're different elements under different paragraphs of 152, your Honor. He lies on his schedules in Count 21, where he conceals the $5,000 in Count 4.

THE COURT: All right. I'm with you.

MR. ECKERT: Your Honor, please, again, going from his most recent to his earliest argument, he then argues that Counts 1 and 2, that there's no way a reasonable jury, based upon the facts before it, could convict, in that the intent to defraud hasn't been proven. I will point out to the Court that the intent to defraud is not an element of Count 2. It's simply false statements. You don't have to prove intentional fraud under 1014.

Under 1344, even assuming, but not conceding, that you have to prove an intent to defraud -- and I don't think you do -- but even assuming that you do under the second paragraph which he's charged with, Paragraph 2, that being that he knowingly executes or attempts to execute a scheme or artifice to obtain monies, funds, credits, and so forth of the federally insured financial institutions as opposed to Count 1, or Paragraph 1, which clearly deals with intent to defraud. Even assuming that there's an intent to defraud requirement under both of them, an intent to defraud is defined in the disjunctive. An intent to defraud is defined or it means to act with intent to cheat.

THE COURT: What does it take to obtain money by false or fraudulent pretenses?

MR. ECKERT: That's, your Honor --

THE COURT: Is that not required intent?

MR. ECKERT: Your Honor, we're talking --

THE COURT: I'm talking about 1344 now.

MR. ECKERT: Right, Paragraph Number 2.

THE COURT: Paragraph Number 2. The method by which he obtains money must be by false or fraudulent pretenses.

MR. ECKERT: Right. That's like making false statements to a bank, your Honor.

THE COURT: You have to knowingly make them, though.

MR. ECKERT: Yes, sir. There is a --

THE COURT: And that has to be an intent to obtain the money.

MR. ECKERT: That's true.

THE COURT: So is there specific intent involved?

MR. ECKERT: There is. The question is, is it an intent to defraud or intent to get the money for your own benefit or intent to mislead the bank by false and fraudulent statements. But even assuming that there is an intent to defraud, your Honor, even assuming that, I think that this Circuit model instruction say that an intent to defraud is to act with an intent to cheat or deceive. We don't have to prove that he intended to cheat a bank out of doing anything. All we have to prove is that he intended to deceive the bank. And I think we've done that.

Count 3, I think the Court pretty much stated our objection on Count 3. That's the one where the financial statement was given at Sovran Bank, actually made the $25,000 loan and actually lost $25,000 as a result. They were depending upon the financial statement which he incorporated into his application by reference. And I think --

THE COURT: Well, I think you're fortunate in that it doesn't have to be under that code section reliance on the statement because it's clear to me that the bank loaned the money on the income tax refund. That was expected and maybe he had a credit record that wouldn't support lending him a dime without that, but you don't have to prove that.

MR. ECKERT: Right. And I agree that's fortunate, we don't.

But he did submit a false and fraudulent financial statement regardless -- he never did tell them about the judgment. They may have known about some other problems that he had, but he didn't tell them about the $3.8 million -- I said judgment. I mean lawsuit. And they trusted him on what he said on there. And then, you know, they made the loan and took the loss.

And I suppose, your Honor, there is some evidence that the jury could find that they not only relied upon the expected tax return, but they also relied upon the fact that -- I think Jerry Mathews testified that we would not have made that loan had we known he had a contingent liability of the $3.8 million on the lawsuit. We assumed that it was $500,000 directly tied by Note 7 to his problems with the IRS, which they believed to have been at least in part for several of the years he mentioned.

We think, your Honor, that a fair jury, taken in the light most favorable to the Government, can certainly render a verdict of guilty on all the charges now before him.

THE COURT: You get the last word, Mr. Cornelius.

MR. CORNELIUS: (Pause) I don't have any further argument.

THE COURT: I'm getting my baptism by trying to distinguish between common law fraud and bank fraud, I guess, but reading the statutes and looking at them, not having the element of reliance on some of these and not even having the requirements that the schemes succeeded in getting anything, I think there's ample evidence for all six counts. So I overrule the motion.

They are all weird.

MR. CORNELIUS: Judge, we'll be ready to proceed. I don't have an opening statement unless you want me -- require me to make one?

THE COURT: No, sir.

MR. CORNELIUS: I don't have an opening statement, and I'm ready to proceed. I don't know

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Discussion of Court and Counsel Pages 1133-1135

Thank you.

MR. CORNELIUS: No questions.

THE COURT: You may step down, perhaps for the last time, Mr. Scott.

THE WITNESS: Thank you, Judge.

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WITNESS STOOD ASIDE

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MS. WAERING: Madam Clerk, have all the exhibits that have been tendered by the United States been admitted at this stage?

THE COURT: Are you finished with your rebuttal?

MS. WAERING: Yes, sir.

THE COURT: I mean, all rebuttal evidence?

MS. WAERING: Yes, your Honor. And before I officially rest, I want to make sure --

THE CLERK: Yes, ma'am.

MS. WAERING: The United States rests, then, your Honor.

THE COURT: All right. Ladies and gentlemen --

MR. CORNELIUS: We close.

THE COURT: Okay. That completes the evidence.

In talking with the lawyers, they need some time to get their exhibits and that sort of thing together for closing arguments. By the time that's done, it would probably be too late to get into that. We would have to hold you here until about 7 o'clock if we did that, so what I'm going to do is let you go early today, and we'll reconvene.

Would 9 o'clock be too early for anybody? Would that impose on you too much to get here?

I'm hoping that we will get the case to you after closing arguments. We can get -- and my instructions, get the case to you to start your work, your deliberations, by noon. That's sort of what I'm shooting for tomorrow. So if 9 o'clock would not be too inconvenient for you, I will --

well, let's recess and let the jury clear out, and we'll reconvene. And remember my instructions.

(Jury departed)

THE COURT: All right. Now, that the evidence is closed, I'll let you get your motions in the record.

MR. CORNELIUS: Your Honor -- let's see, Judge, now comes the defendant and we move for judgment of acquittal for the exact same reasons that we argued at the end of the Government's case in chief.

Do you think I need to restate to them or --

THE COURT: No, sir. I think that's in. If there's anything new, you can add that to it.

MS. WAERING: Nothing new. All the same objections.

THE COURT: The ruling will be the same.

MR. CORNELIUS: Okay.

THE COURT: Anything else to clean up the record, get everything in the record we need to before we adjourn for the day?

MR. CORNELIUS: No.

Do you want to talk about the charge?

THE COURT: I do. We'll do that in chambers.

MR. CORNELIUS: Okay. No, sir, nothing for the record.

MS. WAERING: If I may check the one exhibit that we added a few pages to to see that

GOVERNMENT EXHIBIT 1 B

No. 81-18809

IN THE DISTRICT COURT OF
HARRIS COUNTY, TEXAS
333RD JUDICIAL DISTRICT

UNIVERSITY STATE BANK

v.

FIRST STATE BANK OF BELLAIRE

v.

TOM J. CURTIS, JR.,
PAULETTE G. CURTIS, AND
TOM J. CURTIS, JR., INC.

SETTLEMENT AGREEMENT

WHEREAS, Interfirst Bank SW Houston, N.A. (formerly First State Bank of Bellaire) (herein after "IFB") filed a Cross-Claim in the captioned cause against Tom J. Curtis, Jr., Paulette G. Curtis, and Tom J. Curtis, Jr., Inc.; and

WHEREAS, IFB's Cross-Claim seeks to recover from Tom J. Curtis, Jr., Paulette G. Curtis, and Tom J. Curtis, Jr., Inc., jointly and severally, as follows:

(1) On Count One, for One Million Three Hundred Two Thousand Seven Hundred Four and No/100 Dollars ($1,302,704.00), prejudgment interest as permitted by law, reasonable attorney's fees;

(2) On Count Two, for Twenty-Three Thousand Eight Hundred Twenty-Eight and 10/100 Dollars

($23,828.10), prejudgment interest as permitted by law, reasonable attorney's fees;

(3) On Count Three, for Five Hundred Fifty-Seven Thousand Nice Hundred Forty-Nine and 86/100 Dollars ($557,949.86), prejudgment interest as permitted by law, reasonable attorney's fees;

(4) On Count Four, for Eight Hundred Thirty-Five Thousand Three Hundred Ten and 19/100 Dollars ($835,310.19), prejudgment interest as permitted by law, reasonable attorney's fees;

(5) On Count Five, for Six Hundred Seven Thousand Nine Hundred Seventy-Six and 14/100 Dollars ($607,796.14), prejudgment interest as permitted by law, reasonable attorney's fees;

(6) On Count Six, for Thirty-Eight Thousand Six Hundred Fifty-Five and 48/100 Dollars ($38,655.48), prejudgment interest as permitted by law, reasonable attorney's fees;

(7) On Count Seven, for Two Hundred Twenty-Four Thousand Two Hundred Sixty-Three and 85/100 Dollars ($224,263.85), prejudgment interest as permitted by law, reasonable attorney's fees;

(8) On County Eight, for Two Hundred Sixty-Four Thousand Seven Hundred Forty-One and 78/100 Dollars (264,741.78), prejudgment interest as permitted by law, reasonable attorney's fees; and

WHEREAS, Tom J. Curtis, Jr., Paulette G. Curtis, and Tom J. Curtis, Jr., Inc., deny that they are liable to IFB for the amounts claimed; and

WHEREAS, Tom J. Curtis, Jr., Paulette G. Curtis, and Tom J. Curtis, Jr., Inc., have threatened to file certain Counterclaims against IFB, arising out of the matters and transactions upon which IFB's Cross-Claim arose; and

WHEREAS, IFB, Tom J. Curtis, Jr., Paulette G. Curtis, and Tom J. Curtis, Jr., Inc., are desirous of compromising, settling, and disposing of the captioned case

and the claims which have been or could have been asserted by any of the parties, for the purpose of buying the peace of the parties and to avoid the further expense and burdens of litigation;

NOW, THEREFORE, in consideration of the aforementioned premises, and in consideration of the payments set forth herein, the parties agree as follows:

I.

(1) On or before May 20, 1987 at 2 p.m., Tom J. Curtis, Jr. shall pay to IFB the sum of Three Hundred Thousand and No/100 Dollars ($300,000.00) by delivery of a cashier's check to IFB, Attention: Jack Welch, at 5123 Bellaire Boulevard, Bellaire, Texas 77401.

(2) On or before November 20, 1988 at 2 p.m., Tom J. Curtis, Jr. Shall pay to IFB the sum of One Hundred Thousand and No/100 Dollars ($100,000.00) by delivery of cashier's check to IFB, Attention: Jack Welch, at 5123 Bellaire Boulevard, Bellaire, Texas 77401.

(3) On or before May 20, 1990 at 2 p.m., Tom J. Curtis, Jr. shall pay to IFB the sum of One Hundred Thousand and No/100 Dollars ($100,000.00) by delivery of a cashier's check to Attention: Jack Welch, at 5123 Bellaire Boulevard, Bellaire, Texas 77401.

The parties agree and acknowledge that time is of the essence with respect to the foregoing payments.

II.

Contemporaneously with the execution of this Settlement Agreement, IFB, Tom J. Curtis, Jr., Paulette G. Curtis, and Tom J. Curtis, Jr., Inc., have signed and executed an Agreed Final Judgment (hereinafter the "Judgment"), a true and correct copy of which is attached as Exhibit 1. IFB shall retain possession of the Judgment and shall not present

it to the Court for signature and entry by the Presiding Judge, unless Tom J. Curtis, Jr. fails to timely make the payments to IFB in accordance with the terms of the foregoing paragraph. In the event that Tom J. Curtis, Jr. fails to timely make payments to IFB in accordance with the terms of the foregoing paragraph, IFB shall be entitled to immediately present the Judgment for entry by the Presiding Judge. Upon receipt of payment by IFB of all the sums called for in paragraph I, IFB will return to Tom J. Curtis, Jr. the original of the Judgment. Upon the receipt of all payments due by Tom J. Curtis, Jr., pursuant to Paragraph I, IFB shall RELEASE, ACQUIT, and FOREVER DISCHARGE Tom J. Curtis, Jr., Paulette G. Curtis, and Tom J. Curtis, Jr., Inc., of and from any and all liability for the judgment, and of and from any and all other claims, damages, lawsuits, causes of action, of suits, whether known or unknown, which IFB might now have or have ever had based in whole of in part on the allegations made in the lawsuit or as the result of any dealings or transactions between IFB and Tom J. Curtis, Jr., Paulette G. Curtis, and Tom J. Curtis, Jr., Inc.

III.

Tom J. Curtis, Jr., Paulette G. Curtis, and Tom J. Curtis, Jr., Inc. here and now do hereby RELEASE, ACQUIT and FOREVER DISCHARGE IFB and its agents, servants, employees, attorneys, predecessors-in-interest, successors-in-interest, officers, directors, heirs, and assigns of and from any and all liability for all claims, damages, causes of action, or suits, whether known or unknown, which Tom J. Curtis, Jr., Paulette G. Curtis, and Tom J. Curtis, Jr., Inc. might now have or have ever had based in whole or in part on the allegations which could have been made by them in the captioned suit or as a result of any dealings or transactions between Tom J. Curtis, Jr., Paulette G. Curtis, and Tom J. Curtis, Jr., Inc. and IFB.

IV.

The parties shall announce to the Court: that a settlement agreement has been reached, that an Agreed Final Judgment has been signed by the parties, that the parties desire for the Court to retain the cause on the Court's docket pending the payment of the sums due, and that upon the final receipt of all sums due by IFB, the parties will present to the Court a Motion and Order of Dismissal of the captioned cause with prejudice to the right to refile the same. In the event that the Court refuses to retain this cause on its docket pending payment of the sums due, this Settlement Agreement shall be null and void.

V.

This Agreement shall be construed in accordance with the laws of the State of Texas.

EXECUTED this the 21st day of January, 1987.

INTERFIRST BANK SW HOUSTON, N.A.

BY: /s/ Jack Welch
Jack Welch
Chairman of the Board

/s/ Tom J. Curtis, Jr.
Tom J. Curtis, Jr.

/s/ Paulette G. Curtis
Paulette G. Curtis

TOM J. CURTIS, JR., INC.

BY: /s/ Tom J. Curtis, Jr.
Tom J. Curtis, Jr.
President

APPROVED:

LACKSHIN & NATHAN

BY: /s/ B.J. Walter, Jr.
B. J. Walter, Jr.
Texas Bar No. 20815200
2302 Fannin, Suite 500
Houston, Texas 77002
(713) 659-3222

ATTORNEY FOR INTERFIRST BANK SOUTHWEST HOUSTON, N.A.

PATTERSON, BOYD, LOWERY & ADERHOLT, P.C.

BY: /S/ Paxton Lowery
Paxton Lowery
Texas Bar No. 12635000
2101 Louisiana
Houston, Texas 77002
(713) 222-0351

ATTORNEY FOR TOM J. CURTIS, JR., PAULETTE CURTIS, AND TOM J. CURTIS, JR., INC.

THE STATE OF TEXAS

COUNTY OF HARRIS

BEFORE ME, the undersigned authority, personally appeared TOM J. CURTIS, JR., individually and as President of Tom J. Curtis, Jr., Inc., and PAULETTE G. CURTIS, known to me to be the persons whose names are subscribed to the foregoing Agreement, and after being first by me duly sworn, upon their oath stated that they had read the above and foregoing Release, that the matters contained therein are true and correct, that they understand the forgoing Settlement Agreement, that they have executed it for the purposes and consideration set forth, and in the capacities indicated, following which they subscribed their name in my presence.

SUBSCRIBED AND SWORN TO BEFORE ME the undersigned authority on this the 21st day of January, 1987, to certify which witness my hand and seal of office.

/s/ Mildred S. Weiss
Notary Public in and for
the State of TEXAS

My Commission Expires:
1-10-88

THE STATE OF TEXAS

COUNTY OF HARRIS

BEFORE ME, the undersigned authority, personally appeared JACK WELCH, as Chairman of the Board of InterFirst Bank SW Houston, N.A., known to me to be the person whose name is subscribed to the foregoing Agreement, and after being first by me duly sworn, upon his oath stated that he had read the above and foregoing Release, that the matters contained therein are true and correct, that he

understand the forgoing Settlement Agreement, that he has executed it for the purposes and consideration set forth and in the capacity indicated, following which he subscribed his name in my presence.

SUBSCRIBED AND SWORN TO BEFORE ME the undersigned authority on this the 21st day of January, 1987, to certify which witness my hand and seal of office.

/s/ Deamantina Adame
Notary Public in and for
the State of TEXAS

My Commission Expires:
6-24-88

EXHIBIT 1

No. 81-18809

IN THE DISTRICT COURT OF
HARRIS COUNTY, TEXAS
333RD JUDICIAL DISTRICT

UNIVERSITY STATE BANK

v.

FIRST STATE BANK OF BELLAIRE

v.

TOM J. CURTIS, JR.,
PAULETTE G. CURTIS, AND
TOM J. CURTIS, JR., INC.

AGREED FINAL JUDGMENT

Came on to be heard the above entitled and numbered cause and came InterFirst Bank SW Houston, N.A., Cross-Plaintiff, by and through its attorneys, and came the Cross-Defendants, Tom J. Curtis, Jr., Paulette G. Curtis, and Tom J. Curtis, Jr., Inc., and the parties announced to the Court that they had entered into an agreement pursuant to which the following Judgment should be entered.

It is ORDERED, ADJUDGED, and DECREED by the Court that InterFirst Bank SW Houston, N.A. shall have and recover a judgment of and from Tom J. Curtis, Jr. and Tom J. Curtis, Jr., Inc., jointly and severally, the sum of Two Million and No/100 Dollars ($2,000,000.00).

It is further ORDERED that this Judgment shall bear interest at the rate of (10) percent per annum from January 21, 1987 until paid in full.

It is further ORDERED that InterFirst Bank SW Houston, N.A. take nothing against Paulette G. Curtis.

It is further ORDERED that all costs of court are taxed against Tom J. Curtis, Jr., for which let execution issue if the same are not timely paid.

It is further ORDERED that the Interlocutory Judgment previously signed by the Court resolving all matters at issue between the original Plaintiff, University State Bank, and InterFirst Bank SW Houston, N.A. shall be merged wit this Judgment and shall become final.

***

STATE OF TEXAS
COUNTY OF HARRIS

I, Katherine Tyra, District Clerk of Harris County, Texas, do hereby certify that the foregoing is a ture and correct copy of the original record now in my lawful custody and possession, filed on filed among papers as appears of record in my office.

Witness my official hand and seal of office, this 8-20-92.

KATHERINE TYRA, DISTRICT CLERK
Harris County, Texas

By: \s\ Woakley Deputy

GOVERNMENT EXHIBT 1C

No. 81-18809

IN THE DISTRICT COURT OF
HARRIS COUNTY, TEXAS
333RD JUDICIAL DISTRICT

UNIVERSITY STATE BANK

v.

FIRST STATE BANK OF BELLAIRE

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It is further ORDERED that the Interlocutory Judgment previously signed by the Court resolving all matters at issue between the original Plaintiff, University State Bank, and InterFirst Bank SW Houston, N.A. shall be merged with this Judgment and shall become final.

InterFirst Bank SW Houston, N.A. shall be entitled to all writs and processes, including garishment, levy, and execution to collect this Judgment.

All relief not specifically granted to any party to this suit is DENIED.

SIGNED this the 21st day of May, 1987.

\s\ Davie J. Wilson
Judge Presiding

APPROVED AS TO FORM
AND SUBSTANCE AND
ENTRY REQUESTED:

LACKSHIN & NATHAN

BY: /s/ B.J. Walter, Jr.
B. J. Walter, Jr.
Texas Bar No. 20815200
2302 Fannin, Suite 500
Houston, Texas 77002
(713) 659-3222

ATTORNEY FOR INTERFIRST BANK
SOUTHWEST HOUSTON, N.A.

PATTERSON, BOYD, LOWERY &
ADERHOLT, P.C.

BY: /S/ Paxton Lowery
Paxton Lowery
Texas Bar No. 12635000
2101 Louisiana
Houston, Texas 77002
(713) 222-0351

ATTORNEY FOR TOM J. CURTIS, JR.,
PAULETTE CURTIS, AND TOM J.
CURTIS, JR., INC.

\s\ Tom J. Curtis, Jr.
Tom J. Curtis, Jr.

TOM J. CURTIS, JR., INC.

BY: \s\ Tom J. Curtis, Jr.
Tom J. Curtis, Jr.
President

STATE OF TEXAS
COUNTY OF HARRIS

I, Ray Hardy, District Clerk of Harris County, Texas, do hereby certify that the foregoing is a ture and correct copy of the original record now in my lawful custody and possession, as appears of record in Vol. 3745, page 60. Minutes of said court on file in my office

Witness my official hand and seal of office, this 3-9-88.

RAY HARDY, DISTRICT CLERK
Harris County, Texas

By: \s\ By Deputy

GOVERNMENT EXHIBIT 2

TOM J. AND/OR PAULETTE CURTIS
Balance Sheet
March 31, 1986
UNAUDITED

ASSETS

CURRENT ASSETS

Cash (Note 1)	$ 40,926
Certificates of Deposit (Note 2)	190,000
Notes Receivable (Note 3)	3,177,160
Stocks/Bonds	7,710,000
Total Current Assets	$11,118,086

REAL ESTATE, at Fair Market Value

Mechunk Creek Stables, 211 Acres, VA	2,000,000	
Virginia Farms	1,250,000	
21 Acres with House	325,000	
22 Acres with House	330,000	
7 Acres	50,000	
2.5 Acres with House	150,000	
Total Real Estate, at Fair Market Value		4,105,000

VEHICLES AND EQUIPMENT, at Fair Market Value

Miscellaneous Farm Equipment	165,000

OTHER ASSETS, at Fair Market Value	
Home Furnishings and Personal Effects	250,000
TOTAL ASSETS	$15,638,086

TOM J. AND/OR PAULETTE CURTIS
Balance Sheet
March 31, 1986
UNAUDITED

LIABILITIES

CURRENT LIABILITIES		
Accounts Payable	$ 10,000	
Current Portion, Mortgages Payable--Principal and Interest (Note 4)	64,262	
Total Current Liabilities		$ 74,262
NONCURRENT LIABILITIES		
Noncurrent Portion, Mortgages Payable		
Mechunk Creek Stables, 211 Acres, VA	915,000	
Interm Loans, Development Property (Note 5)		
Virginia Farms (7 tracts)	744,000	
Virginia Farms w/House	250,000	
Virgina Farms w/House	255,000	
7 Acres, State Road 648	30,000	
2.5 Acres w/House	112,000	
Operating Lines of Credit	150,000	
Total Noncurrent Liabilities		2,456,000
INSTALLMENT LOANS, Vehicles and Equipment (Note 6)		139,700

CONTINGENT LIABILITES (Note 7)	500,000
TOTAL LIABILITIES	3,169,962
NET WORTH	
NET WORTH, Fair Market Value Basis	12,468,124
TOTAL LIABILITIES AND NET WORTH	$15,638,086

TOM J. AND/OR PAULETTE CURTIS
Notes to the balance sheet
March 31,1986
UNAUDITED

NOTE 1: CASH

Cash at March 31, 1986 is composed of the following amounts:

First Virginia Bank Central Keswick Special Account Account # 3003-3152	$ 688.12
Guaranty Savings & Loan Charlottesville, Va. Account #30-101805	31,782.00
Guaranty Savings & Loan Charlottesville, Va. Account # 03-142288	8,456.00
Total	$40, 926.12

This total does not include any trust accounts.

NOTE 2: CERTIFICATES OF DEPOSIT

Certificates of deposit at March 31, 1986 were as follows:

Guaranty Savings & Loan	40,000
Cardinal Savings Loan	150,000
Total	$190,000

NOTE 3: NOTES RECEIVABLE

At March 31, 1986, Mr. Curtis was the holder of notes receivable as follows:

Demand Notes from Keswick Properties, Inc.	$1,065,000
Cash Reserve, Guaranty	890,000
Note Receivable, Anderson Tract	744,000
Jesse Hayman & Company 109 Bluebonnet Hills Brenham, Texas 77833	379,715
James Dumas Rosenberg, Texas	98,445
Total	$3,177,160

TOM J. . .ND/OR PAULETTE CURTIS
Notes to the Balance Sheet
March 31, 1986
UNAUDITED

NOTE 4: CURRENT PORTION, MORTGAGES PAYABLE

The current portion of mortgages payable is comprised of the following amounts at March 31, 1986.

Mechunk Creek Stables, 211 Acres, Va.,	$ 64,262

NOTE:5 INTERIM LOANS

Interim Loans on development properties are to be rolled into development and/or onstruction loans in July of 1986.

NOTE 6: INSTALLMENT LOANS ON VEHICLES AND EQUIPMENT

The vehicles and equipment owned by Mr. Curtis were subject to the following amounts of indebtedness at March 31, 1985.

Farm Equipment and Vehicles	$ 139,700

NOTE 7: GENERAL

Mr. Curtis was under audit by the Internal Revenue Service through January of 1983, and has extended his returns for 1981, 1982,

and 1983. These returns are in the process of being prepared at the present time. It is hoped that they will be complete by July 1986.

GOVERNMENT'S EXHIBIT 42

Guaranty
Savings & Loans

June 5, 1987

Timothy D. Riggle
P. O. Box 48
Keswick, Virginia 22947

Re: Construction Loan #01-48-10162

Dear Mr. Riggle:

The interest on your construction loan with Guaranty is overdue in the amount of $2,939.57. Please pay this amount in full by 5:00 p.m. Friday, June 19, 1987. If this is not done, I will forward your construction loan file to our attorney. I regret the possibility of such a serious step, but due to both the delinquency of the construction loan and interest, no other recourse is available.

If you have any questions regarding this matter, please contact me at (804) 978-1100.

Sincerely,
/s/
Christi Johnson
Construction Clerk
Residential Loan Department

cc: Stephan C. Stacy

Guaranty
Savings & Loan

July 7, 1987

M. E. Gibson, Jr., Esquire
Smith, Taggart, Gibson & Albro
P. O. Box 1585
Charlottesville, Virginia 22902

Re: Timothy D. Riggle

Dear Mr. Gibson:

Enclosed please find the following documents and this our request for you to begin foreclosure proceedings on the referenced borrower:

1. Copy of Notice of default dated June 5, 1987.
2. Title Binder in the amount of $112,000.00.
3. Collateral Bond in the amount of $112,000.00.
4. Promissory Note in the amount of $112,000.00.
5. An Appraisal for 2714 Logmill Road, Prince William County, Virginia.
6. Deed of Trust dated November 1, 1985.

We would appreciate your beginning these procedures as soon as possible. If you have any questions, or if we can supply any other documents, please give me a call. Thank you for your assistance in this matter.

Sincerely,
/s/
Christi Johnson
Construction Clerk

cc: Ronald D. Wiley
Michael H. McKeever
Stephan C. Stacy

CLIENT/REALTOR CONTRACT

DATE	COMMENTS
7/9/87	Attempted to call Timothy Riggle in reference to making appointment to convert construction loan to permanent financing. Left message with answering service as no person was in the office. INITIAL: MA
7/10/87	Mr. Clint Eubanks called to say Mr. Riggle was out of town and would not be returning until Wed. the 10th. I requested if he did call in for messages to please have him call me before Wed. INITIAL: MA
7/20/87	Tom Curtis called in reference to Timothy Riggle loan. Mr. Riggle is no longer in the employment of Tom Curtis. Tom Curtis requested that he be allowed to bring loan current and convert to permanent financing. I explained this would not be possible as title was held in Mr. Riggle's name. I spoke w/ Tom and also Steve Stacy as Mr. Curtis asked Steve to call him to decide this matter. Steve Stacy was to call Mr. Curtis & inform him foreclosure on property would be necessary. INITIAL: MA

THE LAW OFFICES OF
McCLURE, CALLAGHAN, CARTER,
ATKINS & BARNES
Suite 200
418 Fourth Street, N. E.
P. O. Box 1333
Charlottesville, Virginia 22902
July 28, 1987

Steve Stacy
Guaranty Savings and Loan Association
206 5th Street, N. E.
Charlottesville, Virginia 22901

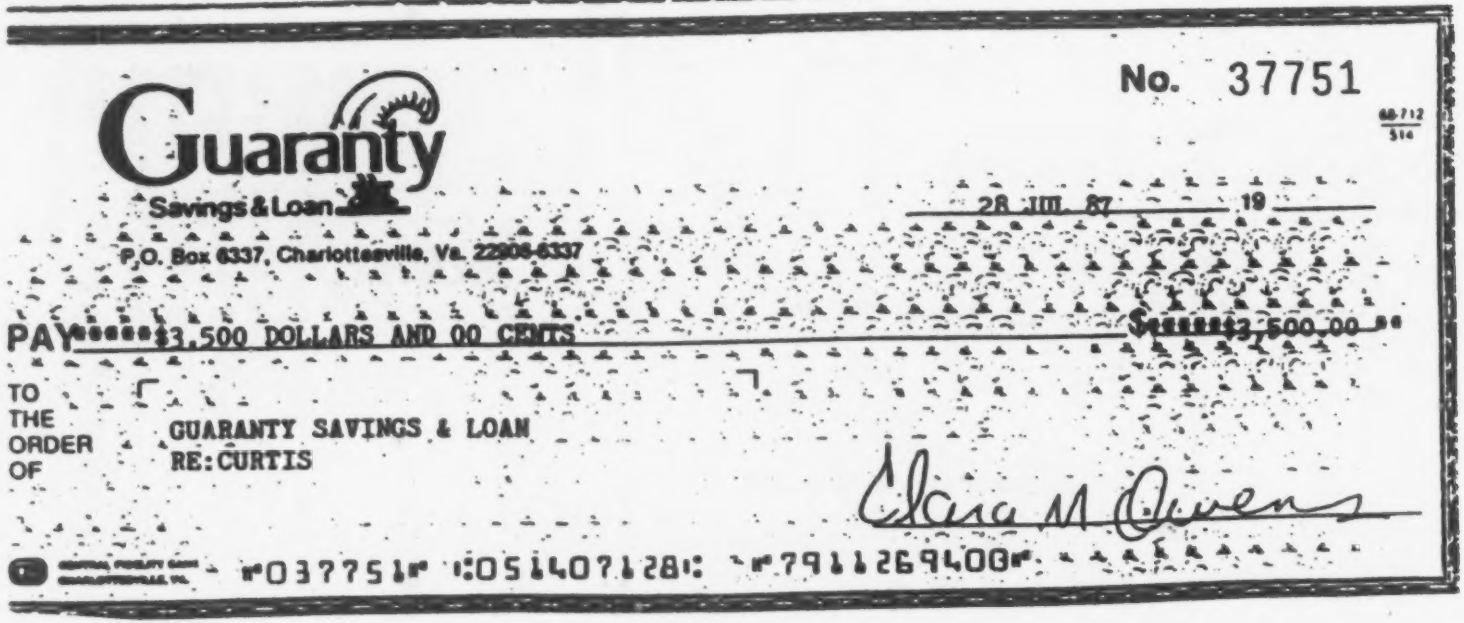
Re: $112,000 loan evidenced by
Regal bond Loan on Parcel A-1

Dear Steve:

This letter will certify that the property securing the above loan is titled in M. Clifton McClure and Robert M. Callaghan, Trustees, of Mechunk Creek Stables Land Trust under Agreement dated February 13, 1984. Any rights of Mr. Regal to purchase subject property have been released.

Very truly yours,
/s/
M. Clifton McClure

MCM/laa


Guaranty
Savings & Loan
P.O. Box 6337, Charlottesville, Va. 22906-6337
No. 37751
28 JUL 87 19
PAY $3,500 DOLLARS AND 00 CENTS $3,500.00
TO THE ORDER OF GUARANTY SAVINGS & LOAN
RE: CURTIS
Clara M Owens
⑈037751⑈ ⑆051407128⑆ ⑈7911269400⑈

LOAN PAYMENT

Name Bogal

Account No. 01-48-10162

Date _____ 19 ___

___ Cash X Check ___ On Us ___ Journal

PRIN	
INT	350000
ESC	
LATE CHARGE	
TOTAL	350000

GUARANTY SAVINGS AND LOAN

A-114

GOVERNMENT EXHIBIT 44

THE LAW OFFICES OF
McCLURE, CALLAGHAN, CARTER,
ATKINS & BARNES
Suite 200
418 Fourth Street, N. E.
P. O. Box 1333
Charlottesville, Virginia 22902
December 8, 1987

Susan C. Gallion
Guaranty Savings and Loan Association
P. O. Box 1305
Charlottesville, Virginia 22902

Re: Tom J. Curtis, Jr.

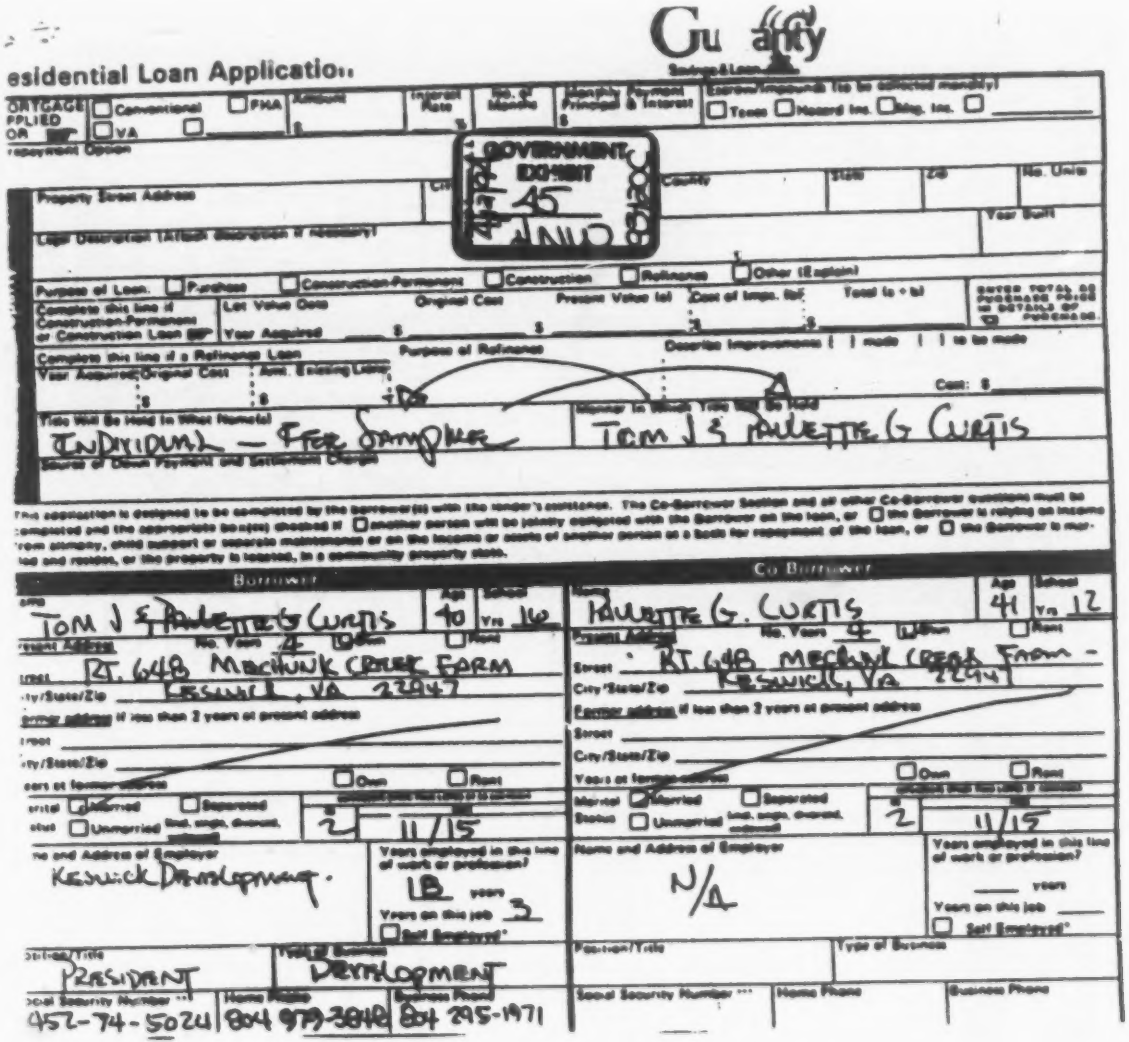
Dear Susan:

In connection with the above loan closing, enclosed are the following:

1. Copy of Deed of Bargain and Sale
2. Original Note
3. Copy of Deed of Trust
4. Copy of commitment letter
5. Copy of insurance binder
6. Original Loan Application
7. Original termite letter
8. Original Truth in Lending Disclosure Statement
9. Letter of no change in financial status
10. Copy of 1986 income tax return
11. Copy of Lease

Very truly yours,
/s/
M. Clifton McClure

MCM/ap
Enclosures



esidential Loan Applicatio

Gu arty

GOVERNMENT EXHIBIT 45

MORTGAGE APPLIED FOR: Conventional, FHA, VA

Property Street Address

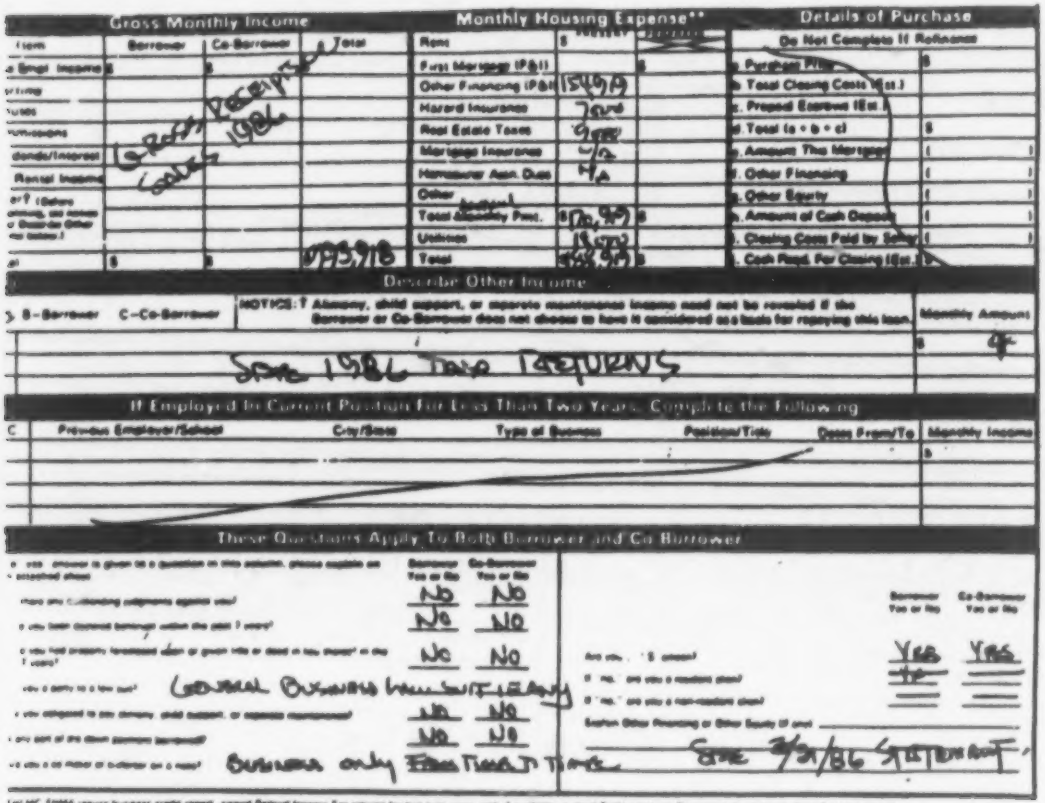
Purpose of Loan: Purchase, Construction-Permanent, Construction, Refinance, Other

Title Will Be Held in What Name(s): INDIVIDUAL — FREE SAMPLES

Manner in Which Title Will Be Held: TOM J & PAULETTE G CURTIS

This application is designed to be completed by the borrower(s) with the lender's assistance. The Co-Borrower Section and all other Co-Borrower questions must be completed and the appropriate box(es) checked if another person will be jointly obligated with the Borrower on the loan, or the Borrower is relying on income from alimony, child support or separate maintenance or on the income or assets of another person as a basis for repayment of the loan, or the Borrower is married and resides, or the property is located, in a community property state.

Borrower		Co Borrower	
Name	TOM J & PAULETTE G CURTIS	Name	PAULETTE G. CURTIS
Age / School Yrs	40 / 16	Age / School Yrs	41 / 12
Present Address	RT. 648 MECHUNK CREEK FARM	Present Address	RT. 648 MECHUNK CREEK FARM
City/State/Zip	KESWICK, VA 22947	City/State/Zip	KESWICK, VA 22947
Former address if less than 2 years at present address		Former address if less than 2 years at present address	
Married / Unmarried	Married	Married / Unmarried	Married
Dependents	2	Dependents	2
Name and Address of Employer	KESWICK DEVELOPMENT.	Name and Address of Employer	N/A
Years employed in this line of work or profession?	18 years	Years employed in this line of work or profession?	____ years
Years on this job	3	Years on this job	____
Position/Title	PRESIDENT	Position/Title	
Type of Business	DEVELOPMENT	Type of Business	
Social Security Number	452-74-5024	Social Security Number	
Home Phone	804 979-3848	Home Phone	
Business Phone	804 295-1971	Business Phone	



Gross Monthly Income

Item	Borrower	Co-Borrower	Total
Base Empl. Income	$	$	
Overtime			
Bonuses			
Commissions			
Dividends/Interest			
Net Rental Income			
Other (Before completing, see notice in Describe Other Income, below.)			
Total	$	$	$

Monthly Housing Expense**

	Present	Proposed
Rent	$	
First Mortgage (P&I)		$
Other Financing (P&I)		
Hazard Insurance		
Real Estate Taxes		
Mortgage Insurance		
Homeowner Assn. Dues		
Other		
Total		$
Utilities		
Total		$

Details of Purchase

Do Not Complete If Refinance

a. Purchase Price	$
b. Total Closing Costs (Est.)	
c. Prepaid Escrows (Est.)	
d. Total (a + b + c)	$
e. Amount This Mortgage	( )
f. Other Financing	( )
g. Other Equity	( )
h. Amount of Cash Deposit	( )
i. Closing Costs Paid by Seller	( )
j. Cash Reqd. For Closing (Est.)	$

Describe Other Income

B=Borrower C=Co-Borrower

NOTICE: † Alimony, child support, or separate maintenance income need not be revealed if the Borrower or Co-Borrower does not choose to have it considered as a basis for repaying this loan.

	Monthly Amount
	$

STATE 1986 TAX RETURNS

If Employed in Current Position For Less Than Two Years, Complete the Following

Previous Employer/School	City/State	Type of Business	Position/Title	Dates From/To	Monthly Income
					$

These Questions Apply To Both Borrower and Co-Borrower

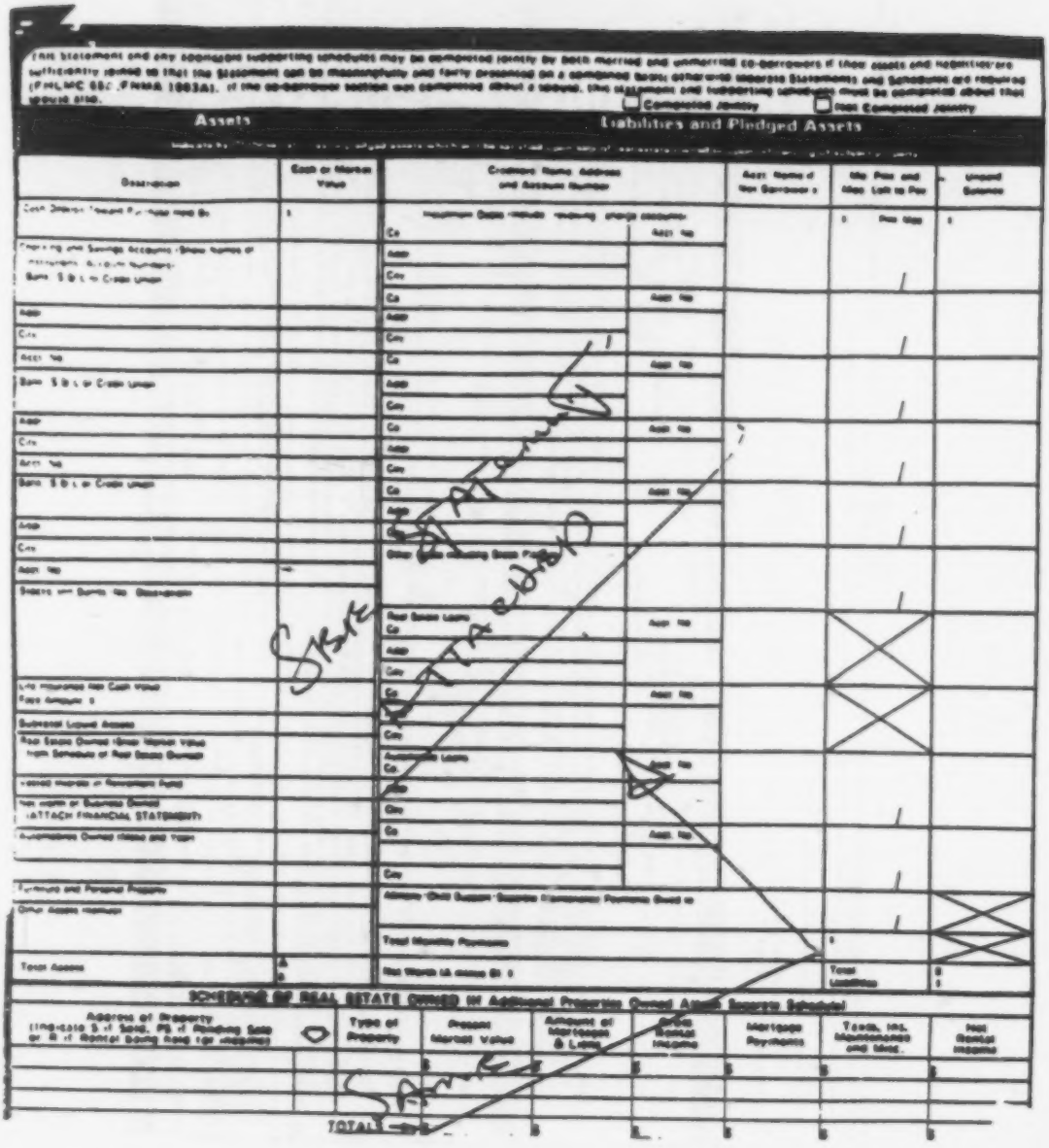
	Borrower Yes or No	Co-Borrower Yes or No
Are there outstanding judgments against you?	NO	NO
Have you been declared bankrupt within the past 7 years?	NO	NO
Have you had property foreclosed upon or given title or deed in lieu thereof in the last 7 years?	NO	NO
Are you a party to a lawsuit?	GENERAL BUSINESS LIABILITY	
Are you obligated to pay alimony, child support, or separate maintenance?	NO	NO
Is any part of the down payment borrowed?	NO	NO
Are you a co-maker or endorser on a note?	BUSINESS only	

	Borrower Yes or No	Co-Borrower Yes or No
Are you a U.S. citizen?	YES	YES
If "No," are you a resident alien?		
If "No," are you a non-resident alien?		

Explain Other Financing or Other Equity (if any) _____

SIGNED 3/31/86 SETTLEMENT

* FHLMC Form 65 requires business credit report, signed Federal Income Tax returns for last two years, and, if available, audited Profit and Loss Statement plus balance sheet for same period.
** Average for Period.



This statement and any accompanying supporting schedules may be completed jointly by both married and unmarried co-borrowers if their assets and liabilities are sufficiently joined so that the Statement can be meaningfully and fairly presented on a combined basis; otherwise separate Statements and Schedules are required. (FHLMC 65C /FNMA 1003A). If the co-borrower section was completed about a spouse, this statement and supporting schedules must be completed about that spouse also.

☐ Completed Jointly ☐ Not Completed Jointly

Assets

Liabilities and Pledged Assets

Description	Cash or Market Value
Cash Deposit Toward Purchase Held By	$
Checking and Savings Accounts (Show Names of Institutions, Account Numbers) Bank, S&L, or Credit Union	
Addr	
City	
Acct No	
Bank, S&L, or Credit Union	
Addr	
City	
Acct No	
Bank, S&L, or Credit Union	
Addr	
City	
Acct No	
Stocks and Bonds (No. Description	
Life Insurance Net Cash Value Face Amount: $	
Subtotal Liquid Assets	
Real Estate Owned (Enter Market Value from Schedule of Real Estate Owned)	
Vested Interest in Retirement Fund	
Net Worth of Business Owned (Attach Financial Statement)	
Automobiles Owned (Make and Year)	
Furniture and Personal Property	
Other Assets (Itemize)	
Total Assets	A $

Creditors Name, Address and Account Number	Acct. Name of Non-Borrower's	Mo. Pmts. and Mos. Left to Pay	Unpaid Balance
Installment Debts (Include "revolving" charge accounts)			
Co	Acct. No	$ Pmts. Mos.	$
Addr			
City			
Co	Acct. No		
Addr			
City			
Co	Acct. No		
Addr			
City			
Co	Acct. No		
Addr			
City			
Co	Acct. No		
Addr			
City			
Other Debts Including Stock Pledges			
Real Estate Loans			
Co	Acct. No		
Addr			
City			
Co	Acct. No		
City			
Automobile Loans			
Co	Acct. No		
Addr			
City			
Co	Acct. No		
City			
Alimony, Child Support, Separate Maintenance Payments Owed to			
Total Monthly Payments		$	
Net Worth (A minus B) $		Total Liabilities	B $

SCHEDULE OF REAL ESTATE OWNED (If Additional Properties Owned, Use Continuation Schedule)

Address of Property (Indicate S if Sold, PS if Pending Sale or R if Rental Being Held for Income)	Type of Property	Present Market Value	Amount of Mortgages & Liens	Gross Rental Income	Mortgage Payments	Taxes, Ins., Maintenance and Misc.	Net Rental Income
		$	$	$	$	$	$
TOTALS		$	$	$	$	$	$

List Previous Credit References

B–Borrower C–Co-Borrower	Creditor's Name and Address	Account Number	Purpose	Highest Balance	Date Paid
	GUARANTY SAV & LOAN			$	
	THEACO		EVEN		MONTHLY
	AMERICAN FEDERAL SAV & LOAN ASSN. VA.		GENERAL PURPOSE LOAN	700	1985

any additional names under which credit has previously been received _____

REEMENT The undersigned applies for the loan indicated in this application to be secured by a first mortgage or deed of trust on the property described n, and represents that the property will not be used for any illegal or restricted purpose, and that all statements made in this application are true and made for the purpose of obtaining the loan. Verification may be obtained from any source named in this application. The original or a copy of this applica- n will be retained by the lender, even if the loan is not granted. The undersigned ☐ intend(s) to ☐ do not intend to occupy the property as their primary idence.

e fully understand that it is a federal crime punishable by fine or imprisonment, or both, to knowingly make any false statements concerning any of the above s to applicable provisions of Title 18, United States Code Section 1014.

_____ Date _____ _____ Date _____

Borrower's Signature Co-Borrower's Signature

Information for Government Monitoring Purposes

The following information is requested by the Federal Government for certain types of loans related to a dwelling, in order to monitor the lender's compliance with equal credit opportunity, and fair housing laws. You are not required to furnish this information, but are encouraged to do so. The law provides that a lender may neither discriminate on the basis of this information, nor on whether you choose to furnish it. However, if you choose not to furnish it, under Federal regulations this lender is required to note race and sex on the basis of visual observation or surname. If you do not wish to furnish the above information, please check the box below. (Lender must review the above material to assure that the disclosures satisfy all requirements to which the Lender is subject under applicable state law for the particular type of loan applied for.)

Borrower ☐ I do not wish to furnish this information

Race/National Origin:
☐ American Indian, Alaskan Native ☐ Asian, Pacific Islander
☐ Black ☐ Hispanic ☐ White
☐ Other (specify) _____

Sex ☑ Female ☐ Male

Co-Borrower ☐ I do not wish to furnish this information

Race/National Origin:
☐ American Indian, Alaskan Native ☐ Asian, Pacific Islander
☐ Black ☐ Hispanic ☐ White
☐ Other (specify) _____

Sex ☐ Female ☐ Male

To Be Completed by Interviewer

This application was taken by:
☐ face to face interview
☐ by mail
☐ by telephone

_____ _____
Interviewer Name of Interviewer's Employer

_____ _____
Interviewer's Phone Number Address of Interviewer's Employer

Form 65 Rev. 10/85 **REVERSE** Fannie Mae Form 1003 Rev. 10/85

A-120

GOVERNMENT EXHIBIT 46

There has been no substantial change in my financial condition since the date of the attached financial statement.

/s/
12-7-87

FINANCIAL STATEMENTS
CONFIDENTIAL

TOM J. AND/OR PAULETTE CURTIS
Balance Sheet
March 31, 1987
UNAUDITED

ASSETS

CURRENT ASSETS

	Cash (Note 1)	$ 50,000
	Certificates of Deposit (Note 2)	100,000
	Notes Receivable (Note 3)	5,200,000
	Stocks/Interest in Keswick (equity)	10,512,000
	Total Current Assets	**$ 15,862,000**

REAL ESTATE, at Fair Market Value

*	798 acres ± Huntsville, AL	13,300,000
	Mechunk Creek Stables, 211 Acres, VA	2,000,000
	Virginia Farms, 203 Acres, VA	913,500
	21 Acres with House	295,000
	22 Acres with House	295,000
	7 Acres	50,000
	2.5 Acres with House	140,000
	Total Real Estate at Fair Market Value	**$ 16,993,500**

VEHICLES AND EQUIPMENT, at Fair Market Value

	Miscellaneous Farm Equipment	**$ 383,000**

OTHER ASSETS, at Fair Market Value

Home Furnishings and Personal Effects	$ 100,000
TOTAL ASSETS	$ 33,338,500

* 798 acres has a market value of $17,600,000 in which is off-set by $4,300,000 in non-recourse debt, the recourse debt is listed under liabilities on page 2.

TOM J. AND/OR PAULETTE CURTIS
Balance Sheet
March 31, 1987
UNAUDITED

LIABILITIES

CURRENT LIABILITIES

Accounts Payable	$	10,000
Current Portion, Mortgages Payable--Principal and Interest (Note 4)		19,443
Total Current Liabilities	$	**29,443**

NONCURRENT LIABILITIES

Noncurrent Portion, Mortgages Payable	
798 Acres Huntsville, AL	4,150,000
Mechunk Creek Stables, 211 Acres, VA	1,240,000
Interim Loans, Development Prop. (Note 5)	
Virginia Farms (7 tracts)	744,000
Virginia Farms w/House	250,000
Virginia Farms w/House	255,000
7 Acres, State Road 648	30,000
2.5 Acres w/House	112,000
Operating Lines of Credit	90,000
Total Noncurrent Liabilities	**6,871,000**

INSTALLMENT LOANS, Vehicles and Equipment (Note 6)	337,000
CONTINGENT LIABILITIES (Note 7)	500,000
TOTAL LIABILITIES	$ 7,737,443
NET WORTH	
NET WORTH, Fair Market Value Basis	25,601,057
TOTAL LIABILITIES AND NET WORTH	$ 33,338,500

TOM J. AND/OR PAULETTE CURTIS
Notes to the Balance Sheet
March 31, 1987
UNAUDITED

NOTE 1: CASH

Cash at March 31, 1987 is composed of the following amounts:

Guaranty Savings & Loan Charlottesville, Va. Account #3000192 Average Balance		2,500
Guaranty Savings & Loan Charlottesville, Va. Account #03-142288 Average Balance		25,000
Total	$	27,500

NOTE 2: CERTIFICATES OF DEPOSIT

Certificates of deposit at March 31, 1987 were as follows:

Cardinal Savings & Loan-IMMF		100,000
Total	$	100,000

NOTE 3: NOTES RECEIVABLE

At March 31, 1987, the Curtis' are the holders of stock and/or beneficial rights receivable as follows:

Demand Notes and stock from Keswick Properties, Inc., Keswick Land Trust, ETAL.	$ 15,712,000
Total	$ 15,712,000

NOTE 4: CURRENT PORTION, MORTGAGES PAYABLE

The current portion of mortgages payable is comprised of the following amounts at March 31, 1987.

Mechunk Creek Stables 211 acres, Va.	$ 19,443

NOTE 5: INTERIM LOANS

Interim loans on development properties are to be rolled into development and/or construction loans in December of 1987.

NOTE 6: INSTALLMENT LOANS ON VEHICLES AND EQUIPMENT

The vehicles and equipment owned by the Curtis'and/or leasing companies were subject to the following amounts of indebtedness and/or lease liability at March 31, 1987.

Farm Equipment and Vehicles	$ 337,000

NOTE 7: GENERAL

Open lines of credit used in general course of doing business and/or for civil disputes that might occur from one statement period to another.

/s/ 10/2/87

GOVERNMENT EXHIBIT 65

PATTERSON, BOYD, LOWERY, & ADERHOLT, P.C.
ATTORNEYS AT LAW
2101 LOUISIANA
713 / 222-0351
HOUSTON, TEXAS 77002

July 15, 1987

Tom J. Curtis, Jr.
P. O. Box 71
Keswick, VA 22947

RE: CAUSE NO. 81-44215 IN THE 281ST JUDICIAL DISTRICT COURT OF HARRIS COUNTY, TEXAS; TEXAS COMMERCE BANK-CHEMICAL SUCCESSOR IN INTEREST TO CHEMICAL BANK AND TRUST COMPANY VS. TOM J. CURTIS, JR., AND GUARANTY BOND STATE BANK

Dear Tom:

I was notified on July 14, that a trial the previous day has resulted in the entry of a Judgment against you in connection with the Texas Commerce Bank-Chemical Successor in interest to Chemical Bank and Trust Company. I believe that the Judgment is in the amount of around $30,000.00. I was not aware that a trial was taking place.

In view of the Judgment in favor of the InterFirst Bank Southwest this seem to be an inconsequential problem. However I thought that I would notify you as to the existence of the Judgment and obtain your instructions as to further handling of the matter.

The file is advanced for your reply.

Sincerely,
/s/Paxton Lowery
Paxton Lowery

PL/ck

THE DAILY PROGRESS
Lifestyles - Section D
Thursday, February 27, 1986

Fighter Keswick Developer Usually Wins
By Kathy Hoke of The Progress Staff

When parents sent their children to lie in front of his tractors at a Houston subdivision, Tom Curtis knew he had a problem on his hands.

Curtis, developer of a proposed $25 million inn, golf resort and residential community at Keswick Country Club, recalled the incident as one of many battles he says he has fought and won during 14 years in real estate development.

... charge of stealing more than $1.2 million from two Houston banks, ... made Curtis careful - careful in what he says to both reporters and the public.

But the former Texan also has a flair for drawing favorable attention to himself.

In December, Arnold Palmer, perhaps the biggest name in golf, stood by his side as Curtis talked about his plans for Keswick in an elaborate news conference and buffet with about 500 guests.

The news conference was designed to present Curtis' development plans in a favorable light. Curtis, similarly, sought to put himself in a favorable light before agreeing to an interview by submitting a wide-ranging, 13-page statement about his early childhood in Philadelphia, ill-fated first marriage, law school years and modest start in Houston real estate.

His recollection of children blocking his equipment was contained in the written statement.

"We were putting in a subdivision and the county had routed our drainage system through another subdivision," Curtis said.

"People from that subdivision would back their cars out where we were digging mammoth 60- and 90-inch culvert insertions into the ground underneath their driveways to stop us from taking drainage out of that subdivision through theirs to a termination point at the creek."

"When the court made them stop impeding our work, then they sent the children out to lie down in front of the tractors and break corners off the reinforced concrete pipes and put sand down the exhaust systems of the tractors."

Curtis said he knew who was behind the actions.

"I went to him directly, and on a Saturday afternoon, I was able to sit down with him, and with a cashier's check for a few thousand dollars, I settled that case out real quick."

Other battles have taken longer, and the stakes have been higher.

In May 1984, Curtis faced charges in Harris County, Texas, that he stole more than $1.2 million for two Houston banks in check-kiting schemes.

Prosecutors alleged that Curtis made numerous transfers to create false balances.

Curtis, in the written statement he submitted before the interview, called that "a very low point in my life."

The root of the problem, as Curtis outlined it in his statement, was the rapid increase in interest rates that began about 1981.

"... we got caught in a prime that went through the roof in nine months. It went from 9 percent money to 23 percent money. Our debt service went from $3,000 a day to somewhere over $12,000 to $13,000 a day, just on the open-end construction loans we had."

The statement went on: "One of the banks in town, which was loaning us money for this project, even went to the point of allowing us to overdraw our accounts to the extent of $1 million to pay soft costs to continue this venture..."

"The bank that was allowing us to overdraw the accounts froze our accounts. When they did this, we found ourselves in a situation that resulted in our selling off over $40 million worth of projects - over $40 million worth of real estate and projects over a nine-month period to just catch what was falling at that time due to the high interest rates ..."

"When bank examiners find problems in a bank such as they did in this case the procedure requires that charges be levied against an individual involved," Curtis said in his statement.

After a month long trial, Curtis was cleared of criminal charges.

"I think the record stands that there has been no misuse or misapplication of any funds, which they have referred to being a check kite," Curtis said in an interview at Keswick. "Never was that the case - ever."

Meanwhile, one of the banks has filed a lawsuit to recover the amount of money allegedly stolen as well as $2.5 million the bank says Curtis owes following foreclosure on several of his Houston properties

The suit, filed in 1981 by First State Bank of Bellaire, now InterFirst Bank SW, is pending.

Curtis was reluctant to be interviewed when told questions would include his legal battles in Houston.

Through Tim Riggle, his Keswick project manager and a former associate in Houston, Curtis urged a reporter to talk with a juror in his trial before he would consent to an interview.

In a telephone interview, the juror, Michael S. Powers, said the jury believed the money prosecutors said was stolen involved a series of unsecured loans approved by bank officials.

"I'm firmly convinced that he wasn't guilty of the charges against him," Powers said. "I think the evidence will speak for itself.

Curtis sent The Daily Progress a copy of a letter Powers mailed to Curtis in Houston in October 1984, five months after Curtis' trial.

In the letter, Powers, marketing director for a Houston architectural firm, asked Curtis to consider hiring his firm for development work.

Powers said the firm, which he joined after the trial, never did any business for Curtis.

As for the bank's pending civil lawsuit ... asking Curtis for nearly ...

... quickly as possible."

"With the size of dollars we were involved with in Texas, that was just a drop in the bucket to what we, ourselves, feel like they owe us," Curtis said, declining to elaborate.

"The shoe's on the other foot now, and that's why the bank still has their case pending, because they're scared to death."

"And I'm getting ready to unload on them. And I'm pretty sure that's what you ought to sense through this interview."

Curtis laughs, then clears his throat. "It's serious business, but that's part of development. A lot of people allege a lot of things about you. ..."

His tape recorder stops. Riggle, who has been sitting in on the interview, flips the tape to the other side before Curtis resumes talking.

"I've never lost a case in court yet. Never, ever, in my whole history of development. I've had many."

He pauses.

"Big ones."

...

In trips between Houston and Philadelphia in his motor home, Curtis and his wife, Paulette, often stopped in Charlottesville and "kind of liked what we saw," he said.

"I remember my wife saying to me one evening when we passed through Charlottesville, that if we ever sold out of our development business there in Texas, this would be a good place to live," Curtis said.

One of the area's advantages, he said, is that a nice dinner in New York or Washington is just a quick flight or a drive away.

So when he decided to get out of development business in Texas, Curtis began to search for a farm in Albemarle.

"My main motive, or drive, then was just to find a farm and let my son run and enjoy himself and my daughter have a horse, and we kind of enjoy the country life," said Curtis, who turned 40 this month.

Although he says he did not intend to develop any property when he bought a Keswick farm in 1984, Curtis soon found himself part owner of the Keswick Country Club - an estate clouded by 15 years of repeated business failures and tragedies of its many owners.

Previous owners failed at Keswick, Curtis said, because they didn't give it enough attention or financing.

"It was always run by a shoestring operation. It never had a premier restaurant, it never had a premier golf course, it never had the inn accommodations needed."

In 1984, his proposal for a 253-unit residential development at Keswick triggered intense opposition in the horse farm and estate country of eastern Albemarle.

Residents feared the development would harm the rural character of the area and deplete inadequate groundwater supplies. Nearly a year and four public hearings later, county supervisors agreed with the residents, despite Curtis' request to scale back his proposal to 68 single-family lots.

Undefeated, Curtis returned with a plan for nearly half as many lots plus 36 guest suites in a new building behind the clubhouse, an estate once known as Villa Crawford.

This time, he won.

In the lavish news conference and reception at the Omni in December, Curtis and Palmer told about 20 news personnel and 500 others of their plans to transform Keswick's deteriorating golf course, swimming pools, clubhouse and surrounding property into a resort, inn and residential community.

At Keswick, membership initiation fees will start at $25,000. Lots will cost between $75,000 and $300,000.

Curtis said that for now, he and his staff of 12 are not trying to ring up sales.

"We do not want to give the public the impression that we needed their money to develop this property," Curtis said recently. "We do not want, nor does Mr. Palmer want, anyone feeling that this property does not warrant our investment before they come and join. Now you quote that verbatim."

The news conference, which preceded a buffet of seafood delicacies and other foods, was conducted :to make people know this was not going to be a just fly-by-the seat-of-your-pants - and you can quote that - development."

"There's one thing I found out about Albemarle County," he said. "If you don't tell them what's going on, they're going to start telling everybody what they think is going on."

Curtis said he was not surprised initial plans for Keswick met widespread opposition from his neighbors. What surprised him, he said, was the length of time for his project to work its way through the county's land-use approval process.

By local development standards, Keswick is a big project. But for Curtis, the $25 million proposed investment

in Keswick "is below what we used to do in Texas. The kinds of lots we used to develop would run from $100,000 to $500,000."

In addition to single-family homes, Curtis' ventures in Texas included shopping centers, warehouses, water districts and low-rise office buildings.

"I guess everything you can develop, I've done one of, at least," Curtis said. "The business has been very good to me."

He got his start around 1972, when one of several law firms he worked for part-time offered him an interest in some real estate. He sold it to a large real estate investment firm.

"I think I picked up on that transaction $14,000, the most money I ever had in my hands at one time," Curtis said. "I thought I had really set the world on fire, and the real estate business hadn't seen anything until I got into it."

Curtis, who estimates he was among Houston's 20 largest development firms, employed 72 people at the peak of his business - before high interest rates in 1981 made chaos of Houston's real estate market. He said his firm had connections with developers and investors in Saudi Arabia, Singapore, Hong Kong, San Francisco, Boston, Chicago, and Missouri.

"We were very proficient in what we did," Curtis said. "But you cannot be proficient in a 22-percent or 23-percent interest environment. It's instant suicide."

He began to sell his Texas projects, with the last one sold in 1984.

When he bought Keswick Country Club, he thought the project would be a weekend job. Now he heads Keswick Properties Inc., and works full-time to push his plans to completion this year. He says he has no desire to develop other land in Albemarle.

Curtis estimates 20 percent of Keswick patrons will come from the Charlottesville area. The rest, he said, will come from throughout the East Coast.

Farmington Country Club, just west of Charlottesville, is full and has a waiting list, Curtis said.

"This is a country club-oriented city, and if the right country club comes at the right time, people can't help but join."